

EXHIBIT 2

Case No. 14-CV-704-GKF-JFJ

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8	STIPULATIONS	
9	It is hereby stipulated and agreed by and between	
10	the parties hereto, through their respective	
11	attorneys, that the deposition of ROBERT FREEMAN may	
12	be taken pursuant to notice and in accordance with	
13	the Federal Rules of Civil Procedure on September 7,	
14	2021, before Mary K. Beckham, CSR RPR.	
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1	THE VIDEOGRAPHER: This is the videotaped	Page 5
2	deposition of Robert Freeman taken on behalf of the	
3	intervenor plaintiff in the matter of United States	
4	of America, plaintiff, Osage Minerals Council,	
5	intervenor plaintiff, versus Osage Wind, LLC, et	
6	al., filed in the United States District Court for	
7	the Northern District of Oklahoma, Case Number	
8	14-CV-704-GKF-JFJ. This deposition is being held	
9	via webconference on Tuesday, September 7th, 2021.	
10	We're on the record at 9:04 a.m.	
11	Will counsel please state their	
12	appearances for the record?	
13	MS. BAKER: This is Jennifer Baker,	
14	counsel for intervenor plaintiff, The Osage Minerals	
15	Council. With me today are my colleagues, Mary	
16	Kathryn Nagle and Ridge Howell.	
17	MR. ASHWORTH: This is Stuart Ashworth	
18	representing the United States. With me are Cathy	
19	McClanahan and Nolan Fields -- Nolan Field --	
20	Fields, sorry, Assistant U.S. Attorneys. I also	
21	have Christina Watson and Michelle Hammond, our	
22	paralegals with the U.S. Attorney's Office.	
23	MR. BALL: Good morning, this is Robin	
24	Ball, Norton Rose Fulbright, for the defendants, and	
25	also along today is Lynn Slade of the Modrall	

<p style="text-align: right;">Page 6</p> <p>1 Sperling firm.</p> <p>2 MR. MAY: Kirk May is here today on behalf</p> <p>3 of the witness, Mr. Freeman.</p> <p>4 THE VIDEOGRAPHER: The court reporter will</p> <p>5 now please swear in the witness.</p> <p>6 WHEREUPON,</p> <p>7 ROBERT FREEMAN,</p> <p>8 after having been first duly sworn, deposes and</p> <p>9 says in reply to the questions propounded as</p> <p>10 follows, to-wit:</p> <p>11 DIRECT EXAMINATION</p> <p>12 BY MS. BAKER:</p> <p>13 Q Good morning, Mr. Freeman. My name is</p> <p>14 Jennifer Baker. I'm the attorney for the Osage</p> <p>15 Minerals Council in this case. I'll be asking you a</p> <p>16 series of questions today. I want to make sure that</p> <p>17 you are comfortable, so if at any point you need a</p> <p>18 break for water, rest room, any reason like that,</p> <p>19 please feel free to just let me know, and we can</p> <p>20 take a break. If you have any difficulty hearing or</p> <p>21 understanding me, please let me know that as well.</p> <p>22 I'm happy to reask any questions. Tell me, do you</p> <p>23 have a smart phone with you today?</p> <p>24 A I do.</p> <p>25 Q Okay. Is it turned on?</p>	<p style="text-align: right;">Page 8</p> <p>1 counsel kind of explained how the deposition is</p> <p>2 going to work?</p> <p>3 A Yeah, I think -- yeah, generally, yes.</p> <p>4 Q Okay. Great. If your counsel does have</p> <p>5 an objection, please go ahead and answer his (sic)</p> <p>6 question unless he specifically instructs you not to</p> <p>7 answer.</p> <p>8 A Okay.</p> <p>9 Q What have you done to prepare for your</p> <p>10 deposition today?</p> <p>11 A The only thing I've done is speak with</p> <p>12 Kirk -- Kirk May.</p> <p>13 Q Okay.</p> <p>14 A I had a brief conversation with Robin and</p> <p>15 Lynn Slade.</p> <p>16 Q Okay. Did you review any --</p> <p>17 A That wasn't all preparation. I would call</p> <p>18 it more just here's what's coming kind of thing.</p> <p>19 You are going to be deposed.</p> <p>20 Q Okay. You didn't review any facts or any</p> <p>21 events specific to the case. It was more just</p> <p>22 preparation for how this process will work today?</p> <p>23 A Correct.</p> <p>24 Q Okay. Great. Do you hold any degrees?</p> <p>25 A I do.</p>
<p style="text-align: right;">Page 7</p> <p>1 A Yes.</p> <p>2 Q Okay. I would ask that you turn the</p> <p>3 ringer off and have it face down, please.</p> <p>4 A Ringer is off, face down.</p> <p>5 Q Great. Thank you. Do you have any other</p> <p>6 electronic devices besides your smart phone and the</p> <p>7 computer that you are talking on?</p> <p>8 A No.</p> <p>9 Q Okay. And do you agree not to text or use</p> <p>10 any messaging system while we're on the record</p> <p>11 during this deposition?</p> <p>12 A Yes.</p> <p>13 Q Great. Do you have anyone in the room</p> <p>14 with you?</p> <p>15 A Just my attorney, Kirk May.</p> <p>16 Q Okay. Do you have any printed documents</p> <p>17 with you?</p> <p>18 A No.</p> <p>19 Q Okay. Can you tell me, have you given a</p> <p>20 deposition before today?</p> <p>21 A No.</p> <p>22 Q Okay. Have you ever testified in court?</p> <p>23 A No.</p> <p>24 Q Okay. Do you have an understanding of</p> <p>25 what the process will look like today, has your</p>	<p style="text-align: right;">Page 9</p> <p>1 Q Okay. Could you tell me what those are,</p> <p>2 please?</p> <p>3 A Yeah, I have a Bachelor's Degree in</p> <p>4 geology and a law degree.</p> <p>5 Q Okay. What institution did you obtain</p> <p>6 those degrees from?</p> <p>7 A University of Missouri, Columbia for the</p> <p>8 geology degree, and the University of Arkansas for</p> <p>9 the law degree.</p> <p>10 Q Okay. Are you currently licensed to</p> <p>11 practice law?</p> <p>12 A I am.</p> <p>13 Q Are you currently practicing?</p> <p>14 A No.</p> <p>15 Q Okay. Can you tell me which jurisdictions</p> <p>16 you are a member of the bar?</p> <p>17 A Well, so, I think technically I'm still</p> <p>18 Arkansas and Missouri. I've actually been going</p> <p>19 through the process to give up my license in</p> <p>20 Arkansas. I think, technically, it's pending before</p> <p>21 the Arkansas Supreme Court right now, so I probably</p> <p>22 still show as having a license there.</p> <p>23 Q Okay. You'll stay licensed in Missouri,</p> <p>24 but you are not currently practicing?</p> <p>25 A That's the plan, yes.</p>

<p>Page 10</p> <p>1 Q Okay.</p> <p>2 A I have not practiced law since 1991.</p> <p>3 Q Okay. And who is your current employer?</p> <p>4 A Well, so I have a board seat and an</p> <p>5 advisory role with Savion, that's spelled</p> <p>6 S-A-V-I-O-N, LLC. I was the CEO of Savion until</p> <p>7 the -- December of this -- or this past year, 2020,</p> <p>8 and have stayed on in just a board and advisory</p> <p>9 role. So that's my only -- I don't have any other</p> <p>10 employment.</p> <p>11 Q Okay. Have you ever worked for Tradewind</p> <p>12 Energy?</p> <p>13 A Yes.</p> <p>14 Q Okay. Can you tell me when that company</p> <p>15 was established?</p> <p>16 A So the predecessor to Tradewind was known</p> <p>17 as Kansas Wind Power, and it was formed before I got</p> <p>18 there, but I think it was actually, technically,</p> <p>19 formed in 2002 would be my guess. So I started</p> <p>20 consulting to Kansas Wind Power in July of 2003 and</p> <p>21 was formerly hired -- formally hired as the CEO of</p> <p>22 Kansas Wind Power in March of 2004. I think I have</p> <p>23 that right. Yeah. And then we -- shortly after I</p> <p>24 was hired as CEO of Kansas Wind Power, we changed</p> <p>25 the name to Tradewind, Tradewind Energy.</p>	<p>Page 12</p> <p>1 not sure what that would be. I'm guessing a little</p> <p>2 on the '02. I don't think it was earlier than that.</p> <p>3 The name change occurred -- my recollection would</p> <p>4 probably be around May of -- around May of 2004, I</p> <p>5 would think.</p> <p>6 Q When the name changed, was it strictly a</p> <p>7 name change, did any of the projects change, the</p> <p>8 scope of the work, anything about the company</p> <p>9 besides the name?</p> <p>10 A No.</p> <p>11 Q Okay.</p> <p>12 A No, I don't -- no, I think it was just --</p> <p>13 it was just a name change. That was it, yeah.</p> <p>14 Q Okay. Do you know why the company was</p> <p>15 started, why it was founded?</p> <p>16 A Well, I wasn't there at the time, but,</p> <p>17 yeah, all I can tell you is that when I came in, it</p> <p>18 was focused on developing wind energy, large scale</p> <p>19 wind energy projects, and, you know, I believe that</p> <p>20 that was -- that was always the business plan before</p> <p>21 I got there.</p> <p>22 Q Okay. Do you know whether the company was</p> <p>23 aware of the Osage Wind project when the name change</p> <p>24 took place, when it became Tradewind Energy?</p> <p>25 A Well, no, I don't -- I don't have any</p>
<p>Page 11</p> <p>1 Q Okay. You said that you were not with</p> <p>2 Tradewind when they started, correct?</p> <p>3 A Correct.</p> <p>4 Q Okay. Do you know who started the</p> <p>5 company?</p> <p>6 A I think it was originally started by a guy</p> <p>7 named Troy Helming.</p> <p>8 Q Okay. And -- go ahead.</p> <p>9 A Then there were -- I mean, Troy hired and</p> <p>10 brought in a few people after he formed it, which</p> <p>11 included Matt Gilhousen and Geoff Coventry, and I</p> <p>12 mention them because Troy ended up leading the</p> <p>13 business and was bought out by the then existing</p> <p>14 shareholders of the business in the 2004 time frame</p> <p>15 after I came in, and then as CEO at that point, I</p> <p>16 kept Matt, Matt Gilhousen and Geoff Coventry on.</p> <p>17 And then there's -- you know, their positions kind</p> <p>18 of grew, and their -- you know, their equity stake</p> <p>19 in the business, you know, also increased over time,</p> <p>20 which I was involved with.</p> <p>21 Q Okay. And you said you believe Tradewind</p> <p>22 was established in 2002. Would that be when the</p> <p>23 name changed from Kansas Wind Power, or would that</p> <p>24 be when Kansas Wind Power was started?</p> <p>25 A I think that's when it was founded. I'm</p>	<p>Page 13</p> <p>1 recollection of the Osage Wind project around that</p> <p>2 time frame.</p> <p>3 Q Okay.</p> <p>4 A I believe that came much -- many, many</p> <p>5 years later.</p> <p>6 Q Could you take your best recollection of</p> <p>7 when that did occur, when Tradewind did become aware</p> <p>8 of the Osage Wind project?</p> <p>9 A Yeah. Well, so, I guess about the only</p> <p>10 thing that I've looked at, knowing that I was going</p> <p>11 to be deposed today, is the transaction between</p> <p>12 Tradewind and Enel on the sale of the Osage Wind</p> <p>13 project, so that was after Tradewind acquired it and</p> <p>14 then we sold it to Enel, and I believe that was in</p> <p>15 the 2014 time frame. I'm -- I guess I -- you know,</p> <p>16 I would say that we must have probably started to</p> <p>17 become aware of it in, say, a year prior to that,</p> <p>18 give or take.</p> <p>19 (Simultaneous speakers.)</p> <p>20 Q (By Ms. Baker) Okay.</p> <p>21 A Probably, yeah.</p> <p>22 Q And that's when you --</p> <p>23 A We -- sorry. Go ahead.</p> <p>24 Q Go ahead.</p> <p>25 A Well, so I was just going to make a point</p>

<p>Page 14</p> <p>1 to your earlier question that we -- Tradewind was --</p> <p>2 became Tradewind -- or known as Tradewind in '04.</p> <p>3 As I said, so what would that be, nine years or</p> <p>4 something, so...</p> <p>5 Q Okay. And you believe that around 2013 is</p> <p>6 when Tradewind became aware of the Osage Wind</p> <p>7 project?</p> <p>8 A I think so, yeah. And actually, I</p> <p>9 don't -- coming into this, I didn't even remember</p> <p>10 really the years specifically. I just knew it was a</p> <p>11 long time ago. I think the only reason that I'm</p> <p>12 able to really call up the 2014 date is because I</p> <p>13 looked at the date on the membership interest</p> <p>14 purchase agreement between Tradewind and Enel just</p> <p>15 to get my head around what -- when that transaction</p> <p>16 occurred.</p> <p>17 Q Okay. Did you become aware of the Osage</p> <p>18 Wind project through Tradewind?</p> <p>19 A Yeah. I mean, yes, it would have been</p> <p>20 through Tradewind. We didn't have any other -- any</p> <p>21 other companies.</p> <p>22 Q Okay. And you wouldn't have separately</p> <p>23 discussed the project with anyone outside of</p> <p>24 Tradewind?</p> <p>25 A No, it would have been in our just -- our</p>	<p>Page 16</p> <p>1 development efforts, and then we would have</p> <p>2 opportunities from time to time, you know, come</p> <p>3 across our desks, as far as projects to acquire.</p> <p>4 And we did acquire a number of projects in Oklahoma.</p> <p>5 So I would say -- and then as developers, our job</p> <p>6 was to -- was to be able to formulate basically an</p> <p>7 expert view or opinion on what were good locations</p> <p>8 in the state for building large scale wind projects,</p> <p>9 and that included an analysis of -- well, all the</p> <p>10 things we did, including offtake, you know, power</p> <p>11 sales opportunities, permitting, transmission</p> <p>12 interconnect, land acquisition, all those kinds of</p> <p>13 things. So that was certainly a project -- as</p> <p>14 evidenced by the fact that we bought it, that was a</p> <p>15 project that checked all the boxes for us.</p> <p>16 In terms of what cons may have been, the</p> <p>17 only -- I guess the only thing that I would say is I</p> <p>18 think we were aware that there had been -- or we</p> <p>19 became aware, I guess, that there had been some</p> <p>20 history of issues between the Wind Capital Group</p> <p>21 that we bought the project from and -- frankly, I</p> <p>22 don't recall -- I don't recall the name of -- you</p> <p>23 know, or probably correct way of describing the</p> <p>24 governing body associated with the Osage Indian</p> <p>25 tribe there. Whatever that governing body was, we</p>
<p>Page 15</p> <p>1 official roles as employees of Tradewind.</p> <p>2 Q Okay.</p> <p>3 A We didn't -- I guess I'm not sure I'm</p> <p>4 understanding the question. We weren't -- if you</p> <p>5 are asking if any -- if any of us, including myself,</p> <p>6 had business dealings around wind projects outside</p> <p>7 of Tradewind, the answer is no.</p> <p>8 Q You dealt only with Tradewind as far as</p> <p>9 wind projects?</p> <p>10 A Correct.</p> <p>11 Q Okay. Do you recall when Tradewind was</p> <p>12 considering acquiring Osage Wind, what were the pros</p> <p>13 and cons, what were the considerations in whether or</p> <p>14 not to make that purchase?</p> <p>15 A So the project -- I guess all I can say</p> <p>16 about that is as far as the pros go, it was -- we</p> <p>17 were one of the most active developers in the state</p> <p>18 of Oklahoma. As -- you know, as Tradewind we were</p> <p>19 kind of one of the big dogs in the state of</p> <p>20 Oklahoma. That was a primary market for us, and so</p> <p>21 we were -- and we had -- we had ongoing sort of</p> <p>22 continued growth plans for that market. We saw it</p> <p>23 as a key market, and it was a market that we felt</p> <p>24 like we understood really well. So we were looking</p> <p>25 for ways to grow in Oklahoma, which included our</p>	<p>Page 17</p> <p>1 became aware that there had been some dispute there,</p> <p>2 and so I'm sure that we -- you know, we looked at</p> <p>3 that and considered that and would have discussed</p> <p>4 that with our board on a project acquisition and,</p> <p>5 ultimately, got comfortable with how it was resolved</p> <p>6 and moved forward with the acquisition.</p> <p>7 Q How did you become aware of that dispute,</p> <p>8 as you called it?</p> <p>9 A We would do -- on any projects -- on any</p> <p>10 project that we would buy, we would do -- I guess as</p> <p>11 you would expect, we would do very thorough due</p> <p>12 diligence. So every part of our team at Tradewind</p> <p>13 would dig into a project to make sure that there</p> <p>14 weren't any, you know, sort of show stoppers or</p> <p>15 things that would ultimately keep the project from</p> <p>16 getting built where we would acquire it, pretty</p> <p>17 normal stuff. So somewhere in that due diligence</p> <p>18 process, we would have become aware of it.</p> <p>19 Q Do you recall specifically how? Were you</p> <p>20 speaking to someone they mentioned it, did you</p> <p>21 receive correspondence, was it something else?</p> <p>22 A No, I don't. I don't remember.</p> <p>23 Q Okay.</p> <p>24 A I would imagine that kind of thing would</p> <p>25 come up pretty quickly, but I would -- you know, I</p>

<p style="text-align: right;">Page 18</p> <p>1 would kind of -- honestly, I would just be 2 speculating. You know, again, we would -- we would 3 be extremely thorough on that kind of stuff, 4 including, you know, we would have attorneys, our 5 lawyers would be probably looking for any history -- 6 you know, any history of litigation involving the 7 name of the company or, you know, the project 8 company we were buying. We would be interviewing 9 the management team, of, you know, the selling 10 company, asking lots of questions, so it could have 11 come up in multiple, probably different ways. 12 Q Okay. When Tradewind was started, was it 13 part of the Enel corporate family, was it considered 14 an affiliate or subsidiary or anything like that of 15 Enel? 16 A No. 17 Q Okay. Did it ever become part of Enel? 18 A No, not part of Enel in the sense of being 19 a controlled -- you know -- or a wholly owned, that 20 kind of thing, if that's the question. So the 21 relationship between Tradewind and Enel, it did -- 22 it was a little bit fluid over the years. That -- 23 so to get the chronology on the table, so we talked 24 about the origins of Kansas Wind Power and Tradewind 25 in that time frame, so then we formed the</p>	<p style="text-align: right;">Page 20</p> <p>1 19 percent. 2 The other thing that's, I think, 3 probably -- for a complete answer to your question 4 is worth sort of describing is the way that the 5 partnership worked is Tradewind was exclusively a 6 developer, so we would do all -- and let me know if 7 you need me to explain how this -- you know, what we 8 were involved in. We would do all of the work on a 9 project, beginning with site identification and then 10 complete development of the project, leading up to 11 the beginning of construction or what in industry 12 jargon we would call financial close, that would 13 allow for the funding of construction. So 14 everything preceding that was Tradewind's -- 15 generally Tradewind's responsibility, and then we 16 felt -- we would always sell projects 17 preconstruction. 18 So pursuant to the partnership Enel had, 19 essentially, a right of first refusal on Tradewind 20 projects, and then in concept if they exercised 21 their right, we would sell the project to Enel. If 22 they didn't, we would sell to someone else. 23 As it happened on the wind side, we sold 24 the vast majority of our projects to Enel, which is, 25 you know, probably not surprising. That's why they</p>
<p style="text-align: right;">Page 19</p> <p>1 partnership with Enel in September of 2006. 2 Q Could you repeat that? You formed the 3 partnership with Enel? 4 A In September of 2006. 5 Q Okay. 6 A And at the time that we formed the 7 partnership, we both sold a minority equity stake in 8 the company to Enel, and we also signed a separate 9 partnership agreement, pursuant to which we would -- 10 we would have a partnership around the development 11 and then -- well, around the development of 12 projects. 13 And I guess -- so there was a pretty 14 significant -- there may have been some relatively 15 minor changes in how that relationship was 16 constructed. There was a pretty big transaction in 17 2012 that involved a -- sort of a cashing out of 18 the -- well, the very first shareholders in the 19 company, the original shareholders. I want to say 20 there were probably around 20. So in 20 -- in 2012 21 those 20 shareholders were cashed out, and in the 22 context of that transaction Enel still only owned a 23 minority stake. In fact, their stake went down, so 24 it was -- it was originally around 40 or 45 percent 25 of the company, and in 2012 it dropped to around</p>	<p style="text-align: right;">Page 21</p> <p>1 were in the partnership with us. We did have -- we 2 did have at least one project that we sold to 3 someone other than Enel, so, yeah, go put a fine 4 point on it, we -- Tradewind was never in the 5 business of constructing projects or operating 6 projects. We were always completely out at a 7 preconstruction phase. I'll stop there and see if 8 you have any more questions about that. 9 Q You mentioned that Enel had a right of 10 first refusal for projects that Tradewind was 11 selling, right? 12 A Correct. 13 Q Okay. Was that memorialized in some kind 14 of agreement or a contract between Tradewind and 15 Enel? 16 A Yes. 17 Q Do you know what the date was of that 18 agreement? 19 A Well, the very first one would have been 20 in September of 2006. To what extent that document 21 was amended over time, I don't recall. 22 Q Do you remember the title of the document? 23 A No. 24 Q Okay. And you mentioned that Enel's 25 ownership interest in Tradewind kind of fluctuated.</p>

<p style="text-align: right;">Page 22</p> <p>1 When did Enel first obtain or acquire any ownership</p> <p>2 interest in Tradewind?</p> <p>3 A September of 2006.</p> <p>4 Q Okay.</p> <p>5 A I think I've got the month right. I</p> <p>6 don't -- yeah, I don't recall the day, but I think</p> <p>7 it was September of '06, yeah.</p> <p>8 Q Okay. So Tradewind has never been a</p> <p>9 subsidiary of Enel or any other Enel related entity;</p> <p>10 is that right?</p> <p>11 A When you say "subsidiary," I assume you</p> <p>12 mean as in a controlled -- that they would have a --</p> <p>13 more than a 50 percent ownership, so a control --</p> <p>14 control of the company?</p> <p>15 Q Yes.</p> <p>16 A No. They never -- no, they never owned</p> <p>17 anything other than a minority stake in the company</p> <p>18 until the company was essentially split up and sold</p> <p>19 in 2019.</p> <p>20 Q Okay. You mentioned you were the CEO at</p> <p>21 Tradewind, right?</p> <p>22 A Correct.</p> <p>23 Q What were your job responsibilities as</p> <p>24 CEO?</p> <p>25 A Pretty -- pretty standard CEO</p>	<p style="text-align: right;">Page 24</p> <p>1 Q Who were those senior managers?</p> <p>2 A Well, that would have changed over time,</p> <p>3 too. I mean, considering the business was around</p> <p>4 for 16 -- 16 years or whatever. So that would have</p> <p>5 changed quite a bit, but we -- I guess, certainly,</p> <p>6 Matt Gilhousen was the kind of long-term chief</p> <p>7 development officer, Geoff Coventry was the</p> <p>8 long-term chief operating officer, and then we had</p> <p>9 various and sundry people under those two guys that</p> <p>10 ran the different divisions of the business.</p> <p>11 So, yeah, it's a little tough to say who</p> <p>12 those people were, just because I would kind of need</p> <p>13 a snapshot in time, and I'm not sure I would be able</p> <p>14 to remember, you know, exactly, depending on what</p> <p>15 the time frame was, but, certainly, I guess once the</p> <p>16 company hit full stride we got to about 145</p> <p>17 employees. We became one of the -- one of the</p> <p>18 largest developers in the U.S., and I guess when</p> <p>19 that team was fully built out, you know, we probably</p> <p>20 had eight or ten departments, and, I mean, I can</p> <p>21 name some names of people that ultimately were</p> <p>22 heading those departments, but I don't know if that</p> <p>23 would sync up with whatever time frame you are</p> <p>24 looking for, so...</p> <p>25 Q Okay. So you couldn't tell me who the</p>
<p style="text-align: right;">Page 23</p> <p>1 responsibilities. So, I mean, I -- I guess, I</p> <p>2 reported to the board of directors, and all of the</p> <p>3 employees of the company ultimately, you know,</p> <p>4 reported up to me. I don't remember how many direct</p> <p>5 reports I had. That changed over time, but at times</p> <p>6 probably -- you know, at most I would probably have</p> <p>7 eight or ten direct reports, and the rest of the</p> <p>8 company would then report up through those people to</p> <p>9 me.</p> <p>10 And I was -- yeah, I was just responsible</p> <p>11 for strategy, personnel, culture. I was involved in</p> <p>12 all the day-to-day, made major decisions, you know,</p> <p>13 that would need to be made. I would at least be</p> <p>14 making recommendations, you know, and discussing</p> <p>15 major decisions with the board. Things that didn't</p> <p>16 require board approval, usually, I mean, you know, I</p> <p>17 guess -- I guess in concept -- I guess the buck</p> <p>18 stopped with me, so to speak. We had -- I had a</p> <p>19 very -- I had a lot of what -- I guess a high trust</p> <p>20 relationship with Matt Gilhousen and Geoff Coventry,</p> <p>21 who were also equity owners in the business and, for</p> <p>22 that matter, our senior managers in the business.</p> <p>23 So I would -- you know, I would certainly -- they</p> <p>24 were involved in decision-making with me. That was</p> <p>25 the basic construct.</p>	<p style="text-align: right;">Page 25</p> <p>1 head of the departments were in 2012 -- in 2012?</p> <p>2 A In 2012 -- I mean, there's a few that I</p> <p>3 could speak to pretty confidently, I think, because</p> <p>4 they were people that were certainly with the</p> <p>5 company at that point and were in a leadership role,</p> <p>6 you know, going back pretty far. So, Jennie Dean</p> <p>7 comes to mind, Jennifer Dean, and she most likely</p> <p>8 would -- what I can't recall is whether she had</p> <p>9 staff under her at that point, which she would have</p> <p>10 either been the only in-house biologist and person</p> <p>11 responsible for environmental and permitting, or if</p> <p>12 we had additional staff, she would have been the</p> <p>13 head of that group, I would say pretty confidently.</p> <p>14 What else? On transmission, the</p> <p>15 transmission team, I'd be pretty confident in saying</p> <p>16 that would have been Derrick Sunderman. Again, he</p> <p>17 would have either been the only transmission person</p> <p>18 or heading a staff, if we had a staff at that point.</p> <p>19 What other departments? I mean, we had a</p> <p>20 business development group. That one would be a</p> <p>21 little tougher -- well, that would have been Frank</p> <p>22 Castanza in 2012. That was kind of the sales arm</p> <p>23 that would have been responsible for long-term power</p> <p>24 sales off of our projects.</p> <p>25 Kevin Walters, for sure, would have been</p>

<p>Page 26</p> <p>1 there, so he was our head meteorologist and would 2 have been the guy that would have been heading up 3 design -- well, I'm sorry, let me rephrase. That's 4 probably not the right term. Not designed from an 5 engineering perspective, but he would have been the 6 guy responsible for laying out the site and where 7 the wind turbines would go. 8 Are there other departments that come to 9 mind? I mean, I guess real estate. Honestly, I 10 don't -- I don't recall who was heading up real 11 estate at that time. So I shouldn't say on that. I 12 just don't remember for sure. I was thinking about 13 engineering, and I'm having a hard time. You know, 14 we had a very small -- we always had a very small 15 engineering staff. I don't think it was ever more 16 than a few people. At some point Justin Larson 17 became the head of that group, but I don't recall if 18 we had hired Justin yet in 2012. I have a feeling 19 we had not hired him yet. 20 And again, keeping in mind what I was 21 explaining earlier, which is that we would do 22 preliminary -- we would do preliminary engineering 23 and design kind of layouts and -- type layouts, 24 preconstruction, but then, ultimately, when we would 25 sell the project as a development stage asset to</p>	<p>Page 28</p> <p>1 the Osage Wind project? 2 A No. Like I said, I really couldn't even 3 remember what year we were talking when I first got 4 the subpoena, and so my answer to that would just be 5 based on my seeing -- having seen the date on the 6 MIPA, as we call them, the membership interest 7 purchase agreement, between Tradewind and Enel being 8 dated, I believe, in September of 2014. 9 So, yeah, you know, just back up -- you 10 know, just be back up a year, you know, a year plus 11 would be my answer, I guess, for the amount of time 12 that we would need to spend looking at a project, 13 doing due diligence and then an acquisition. 14 Q I'm sorry, I think I might have gotten a 15 little bit confused about that last part. About a 16 year and a half from when you would learn about a 17 project to when you would sell the project, or what 18 was that time frame? 19 A Yeah, no, sorry. So if we sold the 20 project to Enel in 2014, and in this case it was a 21 project we acquired, I don't remember exactly when 22 we started working on that acquisition. So I don't 23 have a date -- I don't have a good date for you on 24 that, but I guess my understanding coming into this 25 is that I believe -- and I'm not even positive of</p>
<p>Page 27</p> <p>1 Enel, then Enel would do the final -- they would do 2 all the final engineering, site layout, stuff like 3 that, unless it was completely locked in by a 4 permit, I guess thinking out loud a little bit, but, 5 you know, I would think the one exception is, you 6 know, you could get -- I think -- I think to some 7 degree sites may have been locked in by permits, and 8 so they would probably have to apply for an amended 9 permit if they were going to change a site layout, 10 but they would certainly do all the kind of final 11 design engineering work on projects associated with 12 the construction phase. 13 Q What kind of permits might lock you into a 14 site or into a specific design? 15 A This is not my area of expertise, but I 16 would -- I would say that county -- county -- 17 some -- not all, but some counties that we were in 18 would require that you have a building permit, and I 19 would imagine that the site layout would be with the 20 building permit context. 21 Q Okay. At any time at all did you ever 22 work for Enel or any Enel company, EGPNA, for 23 example? 24 A No. 25 Q Do you recall when you started working on</p>	<p>Page 29</p> <p>1 this, but I believe that Tradewind, apparently, 2 bought the project from the Wind Capital Group in 3 2013, and so there would have been some amount of 4 time leading up to that acquisition, some number of 5 months, not years. I would -- you know, I would 6 imagine it would be some number of months that we 7 had our team, you know, doing due diligence on the 8 project and, you know, just going back to the 9 question you asked earlier on what kinds of things 10 we would be looking at before we would buy 11 something. 12 That was the only project that -- as best 13 I can recall, that's the only project we ever bought 14 from Wind Capital Group. So we did acquire, you 15 know, a fair number of other projects from other 16 companies, but that was the only one that I recall 17 that we ever acquired from Wind Capital Group. 18 Q Do you recall what your specific job 19 duties were or what your responsibilities were with 20 respect specifically to the Osage Wind project? 21 A I guess generally I would -- on an 22 acquisition I would typically review the legal 23 documents around an acquisition, either buying a 24 project or selling a project. We always had an 25 outside general counsel. We didn't have any</p>

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1 in-house attorneys at Tradewind. I might have been
2 the only one there that actually had -- that had a
3 law degree, you know. Honestly, I don't remember if
4 anybody else there had a law degree or not, but we
5 didn't have any functioning attorneys inside
6 Tradewind, so we always had outside counsel. But I
7 would -- you know, just as my job, I guess, as CEO,
8 just to try to make sure that things were getting
9 done right, and certainly it was -- it was a
10 decently natural fit for me to read a legal document
11 since I had a law degree.

12 So anyway, I would have presumably read
13 through the acquisition documents, and then as far
14 as the due diligence process, I would not personally
15 conduct due diligence. That would be up to the
16 team, and then I would typically only get involved
17 in discussion around those kinds of things to the
18 extent that issues would surface that would, I
19 guess, be deemed by somebody to be worthy of
20 discussion, you know, among the management team or,
21 you know, making the board aware of a situation,
22 that kind of thing.

23 **Q And you mentioned that the team would be**
24 **involved in due diligence. Do you recall the titles**
25 **and names of the folks who were specifically doing**

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1 **the due diligence for the Osage Wind project?**

2 A No, I don't. It's like I said, I don't --
3 quite honestly, I don't even remember how big our
4 staff was at that time. We hired a lot of people,
5 and I would say after that -- whatever time frame
6 we're talking here, 2012, 2013, 2014 -- so I think
7 the company was quite a bit smaller than the 145
8 that I mentioned to you at that time, and I really
9 don't recall who all would have -- would have been
10 kind of running that.

11 The one thing that I can say, you know,
12 with confidence is that Matt Gilhousen, as the chief
13 development officer, would have been, no doubt, very
14 involved with, you know, any issues that were coming
15 up in the due diligence process, and whoever was
16 working on that would have been, ultimately,
17 reporting up to Matt.

18 **Q While you were at Tradewind, did you hold**
19 **any positions or titles other than CEO?**

20 A No.

21 **Q Okay. And did you personally work on any**
22 **kind of a team during your time at Tradewind?**

23 A I'm not sure I -- I don't think I
24 understand the question.

25 **Q Well, you mentioned that there was a team**

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1 **who would do due diligence, and then you were the**
2 **CEO. So were you involved in any teams, or were you**
3 **kind of separate and apart?**

4 A I was -- was I part of the team? Let's
5 see, if you go back -- so if you go back to the very
6 early days back when I first joined as CEO, we only
7 had four or five employees, including myself, so in
8 the very early days we kind of all did everything.
9 Now, in my case there was some -- well, we all did
10 everything.

11 There was some division of responsibility.
12 So Matt Gilhousen was always on development, which
13 is not something that I had any background in, and I
14 didn't have any real expertise in, but, you know,
15 the hats that I was wearing when it was just -- it
16 was just us four or five people, was -- you know, I
17 was mostly at that time focused on power sales and
18 relationships with utility companies that would
19 ultimately be buyers of our -- of the power coming
20 off of our wind projects. So I was doing -- so, you
21 know, I guess, yes, in the very early days I was
22 directly -- you know, I was not, you know, the CEO
23 sitting in the ivory tower waiting for issues to
24 bubble up. I was doing -- I was down in the
25 trenches doing work, and that was -- yeah, that was

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1 power sales stuff. I was involved in lobbying,
2 hiring lobbyists and lobbying state and federal
3 government officials around, you know, the coming
4 wind industry, because that was the very early days
5 of the industry at that time.

6 Certainly a lot of strategy stuff,
7 business planning, capital -- I was always very
8 involved in capital formation, so I would have been
9 the lead person -- this was true throughout the
10 entire history -- or the entire -- the entire
11 lifespan of the company was -- I was always the lead
12 person on raising money to fund the business. I was
13 very involved with hiring people, bringing in new
14 employees. Probably would have been reviewing
15 legal -- any and all legal stuff that was coming
16 through and managing our outside general counsel.
17 So that's kind of -- I think that's the bulk of the
18 things I was doing.

19 Now, as the company grew, as these things
20 typically go, as the company got bigger and bigger,
21 then we had people to do the in-the-trench work, so
22 we would have full-time market development, business
23 development people that were calling on utilities,
24 and so less and less, you know, would I find myself
25 walking into a meeting and talking to a utility

1 company, et cetera. I was not involved with
2 landowner meetings. I was not -- I was never -- I
3 was really never involved with anything around pure
4 development, so landowner meetings, permitting
5 meetings, those kinds of things, transmission
6 related meetings, I was really never involved in any
7 of that.

8 I don't want to keep going and lose track
9 of your question. Is that helpful?

10 **Q Yes. I think that's covered it. To**
11 **switch gears just a little bit, did you ever**
12 **communicate with anyone from EGPNA regarding the**
13 **Osage Wind project?**

14 A Yes, certainly, I would have -- I would
15 have been -- I would have had conversations with
16 EGP, and it would have presumably been the board --
17 board members. Probably most of my interactions --
18 in fact, I don't even recall for sure how many board
19 seats we had then, and I was -- I guess I had a --
20 technically had a board seat.

21 I'm not even sure I recall for sure, but
22 most of my interactions in that time frame would
23 have been with Mike Storch, who was an executive
24 with EGPNA, and then I would -- I'm guessing it was
25 probably Francesco Venturini, who was the CEO then.

1 His predecessor was Toni Volpe, and, frankly, I
2 don't recall when there was a handoff when Toni
3 stepped down and Francesco took over, but I think it
4 was Venturini in that time frame. So most of my
5 communications as CEO were with those guys on
6 everything, and board meetings were sort of a
7 formality, so we were in discussions all the time.

8 You know, I was on the phone with, you
9 know, one of those -- probably more, but at least
10 one of those guys, if not both of those guys, you
11 know, whoever the top executives were in Boston, on
12 a -- certainly a weekly basis, sometimes daily
13 basis.

14 **Q Okay. Do you recall what you discussed,**
15 **what the topics of conversation were, what you**
16 **talked about?**

17 A I don't -- I don't remember any specifics
18 other than, you know, just to say what would have
19 been a normal discussion around any acquisition that
20 we did, which, again, we did -- we did a fair number
21 of those, would have just been generally what the
22 team was finding with the project, why our team
23 would think it's a good project and we should go
24 forward with the acquisition, the terms of the
25 transaction that are being discussed. It would not

1 have been, you know, unusual at all for Enel to
2 weigh in on, you know, if not direct, just how the
3 project was structured, how much are we paying for a
4 project, is there cash up front or an earn-out, what
5 are the terms of the earn-out, what kind of reps are
6 we getting from the seller, those kinds of things.

7 I'm gonna -- I mean, I'm gonna -- I mean,
8 keeping in mind that this was -- what are we talking
9 here? We're talking eight years ago. So I don't
10 remember any specifics or details around any
11 conversations, but I'm quite sure that the previous
12 history of litigation between the Wind Capital Group
13 and the Osage would have no doubt come up in those
14 conversations, and being -- making sure that we were
15 all confident or comfortable that -- that that
16 situation had been resolved, it was sort of
17 dispositive of the matter and that we were -- you
18 know, the project was basically free and clear.

19 That -- I can't, you know, recall any
20 other -- any other specifics, and on that one I
21 don't remember specifics. I just know that there's
22 no way that that would not have come up.

23 **Q Okay. Do you recall any conversations**
24 **with Wind Capital Group about the Osage Wind**
25 **project?**

1 A It would be basically the same answer. I
2 do recall that I was on the phone. I was on a
3 couple of calls, I think, with David Boyce, I think
4 is the guy's name, and then a couple of calls -- I
5 don't remember how many, but maybe a couple of calls
6 with the CEO of the company that owned the Wind
7 Capital Group out of Ireland, and I think her name
8 was Rosheen. I think everybody -- everybody called
9 her Rosh and, quite honestly, I don't even remember
10 her last name now.

11 So I was on a few calls with her and David
12 Boyce, presumably around the transaction, because,
13 again, I would -- I would tend to get more directly
14 involved in my role around deal terms and
15 documenting deals, and so I would presume that that
16 would have been my involvement, would have been with
17 those folks and Rosheen, would have been around deal
18 terms and, you know, documenting the deal, you know,
19 risk allocations. You know, there's always a lot of
20 negotiating in those -- any of those kind of
21 transactions around who is taking what risks, and
22 that would show up in the form of how and when
23 people paid contingent payments on projects and that
24 kind of stuff.

25 So that, and then -- so your question was

<p>1 specific to conversations with Wind Capital Group 2 people; is that right? 3 Q Yes. 4 A Yeah, so I had a few conversations over 5 the years with Tom Carnahan, and I don't -- I don't 6 remember whether Tom was still with Wind Capital 7 Group or not at that time, so I don't recall 8 anything specific about talking to him necessarily 9 about the transaction, because I just don't remember 10 if he was still there. 11 We were competitors and, you know, had 12 some -- you know, some healthy -- healthy 13 competition going in our markets and butted heads a 14 few times over that kind of stuff, but then we also, 15 I think, you know, probably tried to work -- there 16 were always -- there were always some amount of 17 collaboration between industry competitors around 18 state legislation and those kinds of things that 19 were in all of our interests, and I probably talked 20 to him about those kind of things. But I can't say 21 that I remember any other specifics about my 22 conversation with Wind Capital Group. 23 Q Do you know who Tom -- you said Carnahan 24 -- went to work for after that? 25 A All I recall is -- I feel like it was a</p>	<p>1 only -- the only projects that I recall that 2 involved the Indians would have been the Osage 3 project and the Mustang Run -- 4 Q Okay. 5 A -- are the only two that come to mind, and 6 I don't recall the timing of -- I don't recall the 7 timing of Mustang Run particularly. And the other 8 thing that I will mention is when you say "Indian 9 trust property," I don't know exactly what that term 10 means, whatever technical meaning there is with 11 that, but we -- as relates to those two projects, 12 you know, what I do recall is that I think we were 13 probably dealing with the same Osage Indian people, 14 and, again, whatever that governing body was on both 15 projects in Osage County. 16 And as best I can recall, it would have 17 been in relation to mineral interests that they may 18 have had, meaning we -- we leased surface ground for 19 wind projects, and I don't recall if we -- I don't 20 recall that we ever leased surface ground from an 21 Indian group. 22 Q Okay. Do you recall if any of the 23 projects were on lands where the subsurface was 24 owned by a tribe or, as you called it, an Indian 25 group?</p>
<p>1 private equity -- some kind of private equity group. 2 I don't -- I don't remember any of the details 3 around that. 4 Q Okay. Did you work on any other projects 5 simultaneously with the Osage Wind project? 6 A Yeah, we had Tradewind -- you mean me 7 personally or Tradewind? 8 Q You personally. 9 A Well, so the company had -- well, I don't 10 know how big we were then, but over time, you know, 11 dozens -- we had done dozens of wind projects, and 12 at some point that number would have been over 100 13 wind projects. And my -- my -- so I would have 14 had -- you know, my role would have been, as I 15 described it, for all of that, with the emphasis on 16 the bigger we got, the more projects, the more 17 people, the more I -- the less I was involved in 18 details and the more I was involved with really just 19 managing up to the board and raising capital and 20 just dealing with whatever the biggest and brightest 21 fires that were burning day to day. 22 Q Okay. Do you recall if any of the 23 projects that you or the company worked on involved 24 Indian trust property? 25 A So Indian trust property, so the -- the</p>	<p>1 A Yeah, I think that was probably the 2 situation with both Osage and Mustang. 3 Q Okay. Any others? 4 A Not that I remember. 5 Q Okay. You mentioned a MIPA before, a 6 membership interest purchase agreement, so if I say 7 MIPA or MIPA, will you understand that that's what 8 I'm referring to? 9 A Yes. 10 Q Great. I want to ask you just a couple of 11 questions to make sure we're on the same page about 12 that. Can you describe in general what a MIPA is? 13 A Yeah, it's a -- so the project company -- 14 each project had its own company that owned it, and 15 each -- the legal entity for each of those project 16 companies was an LLC, a limited liability company or 17 corporation, and the ownership units of the LLC for 18 each project were membership interests. 19 And so Tradewind would wholly own the 20 membership interests of each project company. We 21 would usually establish those early, very early in 22 the process. I mean, right -- as soon as we would 23 identify a project, a site where we would want to 24 establish a project, before we would basically do 25 anything, we would typically set up an LLC.</p>

<p>Page 42</p> <p>1 Tradewind would own it, and then over time</p> <p>2 the assets that would relate to that project would</p> <p>3 be all under the LLC. And then, ultimately, as I</p> <p>4 described, when we would sell the project before</p> <p>5 construction start, we would sell -- we would be</p> <p>6 selling the membership interests in that LLC to</p> <p>7 another party, and, again, in most cases -- on wind</p> <p>8 projects in most cases to Enel Green Power North</p> <p>9 America.</p> <p>10 Q Okay. Who were the parties in general to</p> <p>11 a membership interest purchase agreement?</p> <p>12 A So it would have been Tradewind --</p> <p>13 Tradewind Energy, as the owner of the LLC, would be</p> <p>14 the seller, and then the buyer, again it would</p> <p>15 depend on who the buyer was, but if it was -- if it</p> <p>16 was an Enel purchased project, then the buyer would</p> <p>17 have been, I think -- I think Enel -- well, let's</p> <p>18 see, so Enel Green Power North America -- I don't</p> <p>19 recall the specifics of this, but I think they did</p> <p>20 have a subsidiary that they set up, one or more</p> <p>21 subsidiaries that they set up that would acquire the</p> <p>22 projects from Tradewind. So there may have been one</p> <p>23 or more intermediate companies between the project</p> <p>24 LLC and Enel Green Power. I don't recall the name</p> <p>25 of that entity.</p>	<p>Page 44</p> <p>1 as the buyer, here's the part I'm a little hazy on,</p> <p>2 so -- and this may be what you are asking about.</p> <p>3 If they -- to the extent that they had an</p> <p>4 intermediate subsidiary that was actually the buyer,</p> <p>5 then we may have had EGPNA as a limited guarantor on</p> <p>6 certain things, maybe specific provisions in a</p> <p>7 contract. When you asked the question, I was</p> <p>8 thinking more up the chain all the way to Enel --</p> <p>9 Enel SPA, which is the owner of Enel Green Power,</p> <p>10 which is the owner, I guess, of Enel Green Power</p> <p>11 North America, so the Enel SPA stuff was very hard</p> <p>12 to get, and I'm not sure we ever got that.</p> <p>13 We may have had EGPNA limited guaranties</p> <p>14 on specific provisions in our MIPAs, but, yeah, I</p> <p>15 don't -- there's nothing specific on that that I</p> <p>16 recall beyond that.</p> <p>17 Q Okay. What's the role or purpose of a</p> <p>18 guarantor in one of these agreements?</p> <p>19 MR. BALL: Objection.</p> <p>20 A It would be if for some reason -- and it</p> <p>21 could be for a host of reasons, but if for some</p> <p>22 reason we wanted the backing of a bigger company</p> <p>23 than the buyer of the project LLC, then we would</p> <p>24 have asked for a guaranty of the bigger company.</p> <p>25 That could be financial. It could also be -- it</p>
<p>Page 43</p> <p>1 Q Okay. So you mentioned that under the</p> <p>2 MIPA there is a lender -- I'm sorry, there's a buyer</p> <p>3 and a seller. Is there a lender?</p> <p>4 A No.</p> <p>5 Q Okay. Is there a guarantor?</p> <p>6 A Guarantor?</p> <p>7 MR. BALL: Objection, vague.</p> <p>8 Q (By Ms. Baker) Go ahead and please</p> <p>9 answer.</p> <p>10 A So the only time that I recall guaranties</p> <p>11 coming up would have been -- let's see, if there was</p> <p>12 a future obligation to Tradewind, it's possible that</p> <p>13 we would have required a parent company guaranty</p> <p>14 from Enel, and when I say Enel, I mean up the chain,</p> <p>15 either EGPNA or its parent company. Frankly, I</p> <p>16 don't -- they didn't like to give those, and I</p> <p>17 frankly don't recall -- that was very -- if that --</p> <p>18 if that happened, it would have been very few times.</p> <p>19 I think we probably asked for it more than once, but</p> <p>20 it was a hard thing to get, so that's the only --</p> <p>21 that's the only context I can really think of that a</p> <p>22 guaranty might have -- might have come into play,</p> <p>23 but as relates to -- as relates to -- let's see --</p> <p>24 well, let's see, okay, so as relates to transactions</p> <p>25 between Tradewind and Enel Green Power North America</p>	<p>Page 45</p> <p>1 could be performance, more likely, though,</p> <p>2 financial, I would say.</p> <p>3 Q (By Ms. Baker) And with respect to the</p> <p>4 Osage Wind project, is there a reason you would want</p> <p>5 the backing of a larger company there?</p> <p>6 MR. BALL: Objection to form.</p> <p>7 Q (By Ms. Baker) Please go ahead.</p> <p>8 A I don't -- I don't recall any specifics</p> <p>9 about -- I don't recall any specifics about a</p> <p>10 guaranty on that particular project.</p> <p>11 Q And you don't recall whether there would</p> <p>12 have been a reason to have one or to seek one?</p> <p>13 A I mean, all I would be doing is just sort</p> <p>14 of speculating out loud.</p> <p>15 Q Okay.</p> <p>16 A I honestly don't remember, which I don't</p> <p>17 think is probably a good idea, so, no, I just don't</p> <p>18 -- I don't recall anything on that specifically.</p> <p>19 Q Okay. Did Tradewind ever own Osage Wind,</p> <p>20 LLC?</p> <p>21 A Sorry, say that again.</p> <p>22 Q Did Tradewind Energy ever own Osage Wind,</p> <p>23 LLC?</p> <p>24 A Yes, I believe we did. So the -- frankly,</p> <p>25 I was a little hazy on this, too, until looking back</p>

<p>Page 46</p> <p>1 at the MIPA, but the way that we apparently</p> <p>2 structured that transaction is that Tradewind bought</p> <p>3 the project and then turned around and sold the</p> <p>4 project to Enel.</p> <p>5 Q Do you recall why Tradewind purchased the</p> <p>6 project from Wind Capital Group?</p> <p>7 A I should be -- sorry, I should be probably</p> <p>8 a little more pointed with that. So, presumably,</p> <p>9 that was not Tradewind -- that was not Tradewind</p> <p>10 Energy that actually acquired it, but rather --</p> <p>11 well, let's see, I guess the project subsidiary was</p> <p>12 probably already established, and that's what we</p> <p>13 were buying, so, yeah, it was probably Tradewind</p> <p>14 Energy. I'm sorry, go ahead, say that again,</p> <p>15 please.</p> <p>16 Q Yes. Did -- do you recall why Tradewind</p> <p>17 purchased Osage Wind from Wind Capital?</p> <p>18 A Yeah, so -- well, I take it you are asking</p> <p>19 why did Enel not just buy the project directly as</p> <p>20 opposed to having it go through Tradewind? Is</p> <p>21 that --</p> <p>22 Q Sure.</p> <p>23 A -- what you are asking? So, yeah, so Enel</p> <p>24 was -- this came up in other contexts, other</p> <p>25 projects that we acquired, but they were -- they</p>	<p>Page 48</p> <p>1 of that kind of stuff on -- you know, beyond a sale</p> <p>2 of the project to Enel, but anyway, that was the</p> <p>3 structure, and like I say, we -- I don't remember</p> <p>4 how many, but we bought a fair number of the</p> <p>5 projects over time, many or all which got built, and</p> <p>6 that was always how we did it. Tradewind would buy,</p> <p>7 Tradewind would perfect the projects, and then</p> <p>8 Tradewind would sell to Enel.</p> <p>9 Q Okay. Do you know who came up with the</p> <p>10 concept for the Osage Wind project, whose idea that</p> <p>11 was?</p> <p>12 A No, I don't know any of the history of it,</p> <p>13 particularly in the context of an acquisition. I</p> <p>14 think -- you know, frankly, I'm speculating a bit</p> <p>15 here, but I guess my assumption is that we got a</p> <p>16 phone call from somebody at Wind Capital Group</p> <p>17 asking us if we'd be interested in buying the</p> <p>18 project. But I don't know who made that call and</p> <p>19 who received that call, but I think that's probably</p> <p>20 where the whole thing probably would have started.</p> <p>21 Q Okay. So you don't know whose idea the</p> <p>22 project itself was, you know, how it was originally</p> <p>23 conceived?</p> <p>24 A No, we weren't -- Tradewind had no -- we</p> <p>25 had no involvement in it. That was a Wind Capital</p>
<p>Page 47</p> <p>1 had -- they had pretty rigid views on how they</p> <p>2 wanted these transaction structures as relates to</p> <p>3 Tradewind's expertise and job, and so we were the</p> <p>4 developers, they were the constructors and</p> <p>5 operators, and we had -- we had the team that knew</p> <p>6 how to do due diligence on a development asset.</p> <p>7 They didn't. Frankly, they would have -- they would</p> <p>8 have really struggled with that.</p> <p>9 So what made sense was for Tradewind --</p> <p>10 and we did this time and time again -- Tradewind to</p> <p>11 onboard projects, be completely responsible for all</p> <p>12 of the -- all of the due diligence on projects, and</p> <p>13 then hold the projects during the period of time</p> <p>14 that we were perfecting development, derisking, as</p> <p>15 we would call it, and then ultimately sell to Enel,</p> <p>16 you know, when Enel was comfortable that we had put</p> <p>17 the project through its paces, and either they --</p> <p>18 you know, either they could take a clean handoff and</p> <p>19 manage risk from there going into construction, or</p> <p>20 in some -- that was always true, but in some cases</p> <p>21 we would -- we would have some lingering development</p> <p>22 responsibilities that would usually just be land --</p> <p>23 landowner relations would kind of be the stuff that</p> <p>24 we would -- because we had all those relationships.</p> <p>25 We would -- we would be involved in some</p>	<p>Page 49</p> <p>1 Group project. It was a competitor of ours, so we</p> <p>2 wouldn't -- yeah, we wouldn't have had any</p> <p>3 involvement before the time that we bought it.</p> <p>4 Q Okay. Do you know if Osage County was the</p> <p>5 original location where the project was planned?</p> <p>6 A I don't -- I don't know anything about</p> <p>7 that, no. The only thing -- all I can say is I</p> <p>8 think the project was in -- probably entirely in</p> <p>9 Osage County. What I'm a little hazy on is whether</p> <p>10 any of the project crossed a county boundary, and,</p> <p>11 frankly, I don't remember whether that would have</p> <p>12 been the Osage project or Mustang Run. But, yeah,</p> <p>13 again, certainly any history preceding when</p> <p>14 Tradewind bought the project, we wouldn't have been</p> <p>15 involved with. I don't know why anybody would know</p> <p>16 the answer to that. I don't know the answer to</p> <p>17 that.</p> <p>18 Q Okay. Were you involved in membership</p> <p>19 interest purchase agreements for the Osage Wind</p> <p>20 project or related to the Osage Wind project?</p> <p>21 A Yeah, as previously stated. I would</p> <p>22 have -- I would have reviewed those documents.</p> <p>23 Q Okay. Did you have any specific</p> <p>24 responsibilities under those documents?</p> <p>25 MR. BALL: Objection, vague.</p>

<p>Page 50</p> <p>1 A So you are asking if the documents called</p> <p>2 me out as a person that had responsibilities?</p> <p>3 Q (By Ms. Baker) Yes, or if the company put</p> <p>4 any responsibilities on you pertaining to that</p> <p>5 agreement.</p> <p>6 A Well, no, I don't -- I don't know why --</p> <p>7 the only -- I mean, I don't know why -- I don't know</p> <p>8 that I was named in that document or any document.</p> <p>9 Occasionally when we would sell projects and we</p> <p>10 would be negotiating reps and war- --</p> <p>11 representations and warranties in documents, we</p> <p>12 would restrict -- we would restrict a breach of a</p> <p>13 rep as being specific to individuals named in the</p> <p>14 document. I don't recall whether that was at all</p> <p>15 the case in these documents, whether the individuals</p> <p>16 were named. Sometimes, I mean, that was -- I would</p> <p>17 say that was more the exception than the rule. If</p> <p>18 the individuals were named, I probably would show up</p> <p>19 in those, or I might occasionally, but I would say</p> <p>20 usually not.</p> <p>21 Then as far as -- if you are asking what</p> <p>22 the expectations were of me, I don't think there was</p> <p>23 anything -- there was nothing written in stone.</p> <p>24 There was nothing written down anywhere that said</p> <p>25 Rob Freeman will review legal agreements. Now, as a</p>	<p>Page 52</p> <p>1 A And then Enel would have been represented</p> <p>2 by -- well, they would have been represented -- they</p> <p>3 always had counsel, outside counsel involved. Steve</p> <p>4 Champagne, I think, was around in those days, he was</p> <p>5 their in-house general counsel. So Steve would kind</p> <p>6 of pop in and out and stuff. I have no idea -- I</p> <p>7 just don't recall how much involvement, you know,</p> <p>8 Steve would have on any particular transaction but</p> <p>9 he was around for sure.</p> <p>10 And then as far as I can remember, they</p> <p>11 always had an outside firm involved as well, and</p> <p>12 then -- so that would have been, you know, Rob, Mike</p> <p>13 Storch, their outside counsel, and then, you know,</p> <p>14 Mike would -- the same thing I would do, Mike would</p> <p>15 bring in members of his team as needed to just check</p> <p>16 boxes on things that they would be concerned with</p> <p>17 before they would close a transaction with us, and</p> <p>18 then I would do the same thing.</p> <p>19 I would always have Matt Gilhousen as the</p> <p>20 CEO, I would always have Matt and Geoff both, would</p> <p>21 review those transactions, those documents. I would</p> <p>22 always ask those guys to review them, and then Matt</p> <p>23 and I, with really Matt taking more of the lead, we</p> <p>24 would always have -- we would always have the</p> <p>25 developer that was responsible for a project or</p>
<p>Page 51</p> <p>1 matter of practice, I would always -- I would always</p> <p>2 review legal agreements, and, like I said, have a</p> <p>3 close connection, if not, you know, basically</p> <p>4 oversight or management over outside counsel. Why,</p> <p>5 because I knew my way around legal documents, and I</p> <p>6 wanted to make sure things didn't get messed up as</p> <p>7 much as I could.</p> <p>8 Q Okay.</p> <p>9 A No, I don't -- there was no -- as far</p> <p>10 as -- sorry -- the Enel team at all, they don't --</p> <p>11 you know, they didn't -- I think they were used to</p> <p>12 seeing me in and around legal agreements, but that</p> <p>13 was not like in a job description per se.</p> <p>14 Q Okay. Do you know if anyone from EGPNA</p> <p>15 was involved in the transaction where Tradewind sold</p> <p>16 Osage Wind to Enel Kansas?</p> <p>17 A So, yeah, there would have been -- so</p> <p>18 there was always Enel people on the other side of</p> <p>19 the table. Most of the -- so in that time frame I</p> <p>20 think I'd be correct in saying that the two primary</p> <p>21 architects of sales transactions between Tradewind</p> <p>22 and Enel and sort of, you know, down into kind of</p> <p>23 negotiating the finer points of the deal terms would</p> <p>24 have been me and Mike Storch.</p> <p>25 Q And --</p>	<p>Page 53</p> <p>1 onboarding a project review the document. Every</p> <p>2 head of every department would review a document,</p> <p>3 but, again, keeping in mind all of these people were</p> <p>4 responsible for due diligence before a document</p> <p>5 would get signed, but they would also be reviewing</p> <p>6 the legal agreement, with particular attention being</p> <p>7 paid for reps, warranties and covenants.</p> <p>8 Q When you say reps, what are you referring</p> <p>9 to there?</p> <p>10 A Representations, warranties and covenants.</p> <p>11 Standard -- very standard stuff in any project sale</p> <p>12 agreement where the seller is making</p> <p>13 representations, warranties and covenants to the</p> <p>14 buyer about -- you know, just conceptually about the</p> <p>15 status and condition of the project.</p> <p>16 Q Okay. I believe you mentioned that</p> <p>17 Tradewind entered into a MIPA to purchase Osage Wind</p> <p>18 from Wind Capital Group in 2013; is that right?</p> <p>19 A Yeah, I think that's right. I have not</p> <p>20 looked at that document, so I've heard that date</p> <p>21 come up in just my conversations with Kirk, my</p> <p>22 attorney, but I have not gone back and looked at the</p> <p>23 document. But that was the date that I understood</p> <p>24 that it was executed.</p> <p>25 Q Okay. Have you ever seen that document?</p>

<p>Page 54</p> <p>1 A I would have seen it at that time.</p> <p>2 Q Okay.</p> <p>3 A I've not looked at it since then.</p> <p>4 (Exhibit 78 marked for identification.)</p> <p>5 Q (By Ms. Baker) Okay. Let's go ahead and</p> <p>6 take a look at Exhibit 78. This document was</p> <p>7 previously marked as 78, and the Bates stamp is</p> <p>8 Osage Wind 021248 to 320.</p> <p>9 MR. MAY: Excuse me. Could we take a</p> <p>10 short break before we jump into this at this time?</p> <p>11 MS. BAKER: Absolutely, sure.</p> <p>12 THE VIDEOGRAPHER: We're off the record at</p> <p>13 10:17 a.m.</p> <p>14 (A recess was had.)</p> <p>15 THE VIDEOGRAPHER: We are back on the</p> <p>16 record at 10:33 a.m.</p> <p>17 Q (By Ms. Baker) Mr. Freeman, I'd like to</p> <p>18 ask quickly, did you speak with anyone on the break?</p> <p>19 MR. MAY: Yes, he spoke to me.</p> <p>20 Q (By Ms. Baker) Okay.</p> <p>21 A Okay. Yes.</p> <p>22 Q Did you speak with anyone else?</p> <p>23 A No.</p> <p>24 Q Okay. Let's go ahead and take a look now,</p> <p>25 if my colleague, Ridge, could pull up Exhibit 78.</p>	<p>Page 56</p> <p>1 MS. BAKER: Okay. Ridge, would you mind,</p> <p>2 please, scrolling slowly through the agreement so he</p> <p>3 can see what it is?</p> <p>4 Q (By Ms. Baker) Mr. Freeman, if you'd like</p> <p>5 him to slow down at all, please just let us know.</p> <p>6 There are 73 pages to this document. Would you be</p> <p>7 comfortable if we scroll to the signature page?</p> <p>8 A Sure. I think -- yeah. There's my</p> <p>9 signature, yeah.</p> <p>10 Q Okay. So do you recognize this document?</p> <p>11 A Yeah, it appears to be the purchase</p> <p>12 agreement between Tradewind and Wind Capital Group</p> <p>13 of the Osage Wind project.</p> <p>14 Q Would that be from August 22nd, 2013?</p> <p>15 A That's the date I saw.</p> <p>16 Q Okay. Do you know if this agreement</p> <p>17 includes a form guaranty agreement with EGPNA</p> <p>18 serving as the guarantor?</p> <p>19 A Well, like I said, I don't know that, but</p> <p>20 I just saw a reference to a guaranty, as he was</p> <p>21 scrolling through the top of it.</p> <p>22 MS. BAKER: Ridge, could you show us that</p> <p>23 first page of the guaranty just below this, please?</p> <p>24 Go ahead and keep going. Okay. Right here is</p> <p>25 great.</p>
<p>Page 55</p> <p>1 MR. HOWELL: Jenn, could you give me the</p> <p>2 ability to share my screen?</p> <p>3 MS. BAKER: Oh, I apologize, I didn't know</p> <p>4 that needed to happen, and I'm sorry, if everyone</p> <p>5 will give me just a second. Do you know how to do</p> <p>6 that, Ridge?</p> <p>7 MR. HOWELL: I don't know for sure.</p> <p>8 MS. BAKER: Perhaps the videographer</p> <p>9 knows, because we didn't set up this Zoom. Is that</p> <p>10 something I have control over?</p> <p>11 Why don't we go off the record and resolve</p> <p>12 this and then come back on the record.</p> <p>13 THE VIDEOGRAPHER: We're off the record at</p> <p>14 10:34 p.m.</p> <p>15 (Discussion held off the record)</p> <p>16 THE VIDEOGRAPHER: We are back on the</p> <p>17 record at 10:35 a.m.</p> <p>18 Q (By Ms. Baker) So this is a document that</p> <p>19 has been previously marked as Exhibit 78, Bates</p> <p>20 stamped Osage Wind 021248. Mr. Freeman, do you</p> <p>21 recognize this document?</p> <p>22 A We can't -- can you see the whole page? I</p> <p>23 can't see.</p> <p>24 MR. MAY: It's cropped off at the top --</p> <p>25 the bottom part of the window.</p>	<p>Page 57</p> <p>1 Q (By Ms. Baker) So now that you see this,</p> <p>2 does this refresh your memory, does this agreement</p> <p>3 include a guaranty in which EGPNA is the guarantor?</p> <p>4 MR. MAY: Could you scroll to the bottom</p> <p>5 of the guaranty, please?</p> <p>6 A It appears to me it's a form of agreement</p> <p>7 attached to the exhibit.</p> <p>8 Q (By Ms. Baker) Okay.</p> <p>9 A I don't know if it was executed or not</p> <p>10 executed.</p> <p>11 Q Okay. You don't recall?</p> <p>12 A No, I don't, I don't remember the specific</p> <p>13 about what this was about.</p> <p>14 Q Okay. Do you have any idea what reason</p> <p>15 EGPNA would have for serving as a guarantor?</p> <p>16 MR. BALL: Objection to form.</p> <p>17 A No, I don't recall.</p> <p>18 Q (By Ms. Baker) Do you recall ever</p> <p>19 asking -- as Tradewind Energy, asking EGPNA to serve</p> <p>20 as a guarantor?</p> <p>21 A No, not on this transaction.</p> <p>22 Q Okay. Let's turn to the page that's Bates</p> <p>23 stamped 21293, which is the guaranty agreement. It</p> <p>24 states that "EGPNA will guaranty the duties,</p> <p>25 performance and obligations of the buyer, which is</p>

<p>Page 58</p> <p>1 Tradewind, under the MIPA." Do you see this</p> <p>2 language?</p> <p>3 MS. BAKER: Ridge, are you able to</p> <p>4 highlight this language?</p> <p>5 MR. HOWELL: Yes. Can you repeat that?</p> <p>6 MS. BAKER: It's in the third whereas</p> <p>7 paragraph, the last one, "Guarantor will guaranty</p> <p>8 the duties, performance and obligations."</p> <p>9 Q (By Ms. Baker) Okay. Do you see this</p> <p>10 language, Mr. Freeman?</p> <p>11 A Yes.</p> <p>12 Q Do you know what the duties of Tradewind</p> <p>13 would have been under the agreement?</p> <p>14 A Not -- not from memory, just whatever is</p> <p>15 contained in the document. I mean, I haven't seen</p> <p>16 these documents in seven, eight, whatever it is,</p> <p>17 eight years. So, no, I don't recall the specifics.</p> <p>18 Q Okay. And I understand that you don't</p> <p>19 recall the specifics here, but do you know generally</p> <p>20 what's the purpose of a guaranty of this nature?</p> <p>21 A I think I mentioned that earlier. Just</p> <p>22 conceptually, the guaranty would presumably be to</p> <p>23 backstop obligations of -- in this case Tradewind,</p> <p>24 of -- you know, it's to reduce risk for the seller,</p> <p>25 right, that they get paid and the performance</p>	<p>Page 60</p> <p>1 A Well, it depends on what the guaranty</p> <p>2 says. It would be -- you know, the guaranty should</p> <p>3 be specific as to what the obligations are that it's</p> <p>4 guarantying, but the idea would be -- the idea would</p> <p>5 be that if Tradewind doesn't perform something</p> <p>6 that's covered by the guaranty, then the guarantor</p> <p>7 would cover that obligation.</p> <p>8 Q Okay. Let's go ahead and turn to the page</p> <p>9 that is Bates stamped 21248. You'll see under the</p> <p>10 defined terms here, affiliate is that first</p> <p>11 definition. It's defined as, "With respect to any</p> <p>12 person, any other person controlling, controlled by,</p> <p>13 or under common control with such person. For</p> <p>14 purposes of this definition, the term, control --</p> <p>15 excuse me, the term, control, and correlative terms</p> <p>16 means A, the ownership of 50 percent or more of the</p> <p>17 equity interests in a person or, B, the power,</p> <p>18 whether by contract, equity ownership or otherwise,</p> <p>19 to direct or cause the direction of the policies or</p> <p>20 management of a person. For the avoidance of doubt,</p> <p>21 the company shall be deemed to be an affiliate of</p> <p>22 seller, prior to the closing, but shall not be</p> <p>23 deemed to be an affiliate of seller from and after</p> <p>24 the closing." So based on this definition, were</p> <p>25 there affiliates under this agreement?</p>
<p>Page 59</p> <p>1 occurs, so they are presumably going after a</p> <p>2 bigger -- a bigger company with a bigger balance</p> <p>3 sheet.</p> <p>4 Q Okay. When you say "backstop," what do</p> <p>5 you mean by that term?</p> <p>6 A Normally, you would ask for a guaranty if</p> <p>7 you don't have confidence in the financial</p> <p>8 wherewithal or performance and/or performance</p> <p>9 capabilities of the entity you are dealing with.</p> <p>10 Q Okay. So if -- if, for instance, EGPNA</p> <p>11 was the guarantor in this agreement, then EGPNA</p> <p>12 would backstop, which means, basically, they would</p> <p>13 guaranty or assure Tradewind that they would cover</p> <p>14 any of these duties or financial responsibilities if</p> <p>15 the buyers -- I'm sorry, yes, if the buyer were to</p> <p>16 breach any of those duties?</p> <p>17 MR. BALL: Object to the form.</p> <p>18 Q (By Ms. Baker) Go ahead, please, and</p> <p>19 answer if you can.</p> <p>20 A I'm sorry, could you rephrase the</p> <p>21 question? I'm not sure I understand the question.</p> <p>22 Q Okay. Sure. I'm still kind of trying to</p> <p>23 get to the meaning of this word, backstop, that you</p> <p>24 have used. So if EGPNA was the guarantor, what</p> <p>25 would they be backstopping? What does that mean?</p>	<p>Page 61</p> <p>1 MR. BALL: Objection to form.</p> <p>2 Q (By Ms. Baker) Please keep in mind that</p> <p>3 if your attorney objects, do go ahead and answer,</p> <p>4 unless he instructs you specifically not to answer.</p> <p>5 A Well, I don't recall -- I don't recall how</p> <p>6 the term, affiliate, is used in the agreement. I</p> <p>7 don't know how -- I mean, I see the definition of</p> <p>8 affiliate, but I don't -- I don't know how it came</p> <p>9 up. The only parties that I've seen identified at</p> <p>10 this point are the project company, Tradewind</p> <p>11 Energy, Inc. and Wind Capital Group, and then EGPNA</p> <p>12 as the guarantor. That's what I've seen identified</p> <p>13 so far. So what is the question?</p> <p>14 Q Whether there were any affiliates under</p> <p>15 this agreement?</p> <p>16 A Do you mean were any of the parties to</p> <p>17 this agreement affiliated with each other?</p> <p>18 Q Were any of them meeting the definition of</p> <p>19 affiliates that's defined right here in this MIPA?</p> <p>20 A On the sell side -- seller's side or the</p> <p>21 buyer's side?</p> <p>22 Q Either side.</p> <p>23 A Well, presumably -- my understanding of</p> <p>24 this would be that the seller as the -- would be the</p> <p>25 affiliate of the subsidiary company of selling,</p>

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1 Tradewind, right?

2 **Q Okay. Any other --**

3 A The --

4 **Q Go ahead, please.**

5 A So, then on the buyer's side, the buyer is
6 Tradewind Energy, Inc. There's no -- there's no
7 affiliate -- so you have the buyer -- but the buyer
8 is not affiliated with the seller or the project
9 company before it acquires it under this agreement
10 or the guarantor.

11 **Q Okay. Let's go ahead --**

12 A Is that what you are asking, is that it?

13 **Q Yes. So there's just the parties that you**
14 **see listed and there's no other affiliates involved;**
15 **is that what you are saying?**

16 MR. BALL: Objection to form.

17 **Q (By Ms. Baker) Please go ahead. Is that**
18 **what you are saying, that there's no affiliates**
19 **involved, only the named parties?**

20 MR. BALL: Objection to form.

21 A No, I'm not saying -- not that I can think
22 of, no.

23 **Q (By Ms. Baker) Okay. Let's go ahead and**
24 **turn to page 21251. You'll see here there's a term,**
25 **governmental authority, that's defined, and I'm**

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1 going to read part of the definition to you here.
2 It says, "For the avoidance of doubt, no Native
3 American tribe, Nation, entity, body, organization,
4 governmental or other authority or any agency,
5 division, ministry, instrumentality or authority
6 thereof shall be considered a governmental authority
7 for any purpose hereunder." What's your
8 understanding of why no Native American tribe was to
9 be considered a governmental authority for this
10 agreement?

11 A I don't know the answer to that.

12 **Q Okay. Did Tradewind ever make its own**
13 **independent inquiry into what rights a Native**
14 **American tribe might have in relation to the**
15 **project?**

16 MR. BALL: Objection to form.

17 A Ask the question again.

18 **Q (By Ms. Baker) Sure. Did Tradewind ever**
19 **do its own independent inquiry to try and find out**
20 **whether any Native American tribe had rights related**
21 **to the Osage Wind project?**

22 A Rights related to the project?

23 **Q Yes, any rights that might be affected.**

24 MR. BALL: Objection to form.

25 A Certainly, as a part of our due diligence,

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1 as I already mentioned, we would have been looking

2 at any issues that could affect the project at all,
3 whatever that might be, including -- including
4 mineral interests. Oil and gas interests would fall
5 under that, permits. All those are things that our
6 team would have looked at.

7 **Q (By Ms. Baker) Okay. And which tribes**
8 **were you considering during this review?**

9 A The only tribe that I recall would have
10 been the Osage.

11 **Q Okay. Who would have -- who would have**
12 **looked into that at Tradewind?**

13 A I don't -- I can't name names. We did
14 have -- we would have had our team at Tradewind
15 looking into permitting issues so -- well, so Aaron
16 Weigel was the project development lead, so he would
17 have been directly involved in project review. We
18 did hire -- we hired outside counsel, so we had
19 our -- we had our usual outside counsel for the
20 transaction, and then at some point we hired Lynn
21 Slade's firm to advise us specifically on issues
22 around tribal rights on the project. I don't -- I
23 can't tell you exactly when we hired him, but we did
24 definitely retain them, and they were our advisers.
25 That's probably the best answer I can give.

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1 **Q Okay. You mentioned that you had usual**
2 **outside counsel besides Lynn Slade. Who was that**
3 **usual outside counsel?**

4 A Normally Steve Willman was our attorney
5 that worked on our transactions.

6 **Q And he was affiliated with a separate law**
7 **firm?**

8 A Yes.

9 **Q Okay. And so did he make any conclusions**
10 **as to whether Osage rights would be impacted here by**
11 **development of the project?**

12 A That wouldn't have been his call.

13 **Q Okay. Whose call would that have been?**

14 A That's why we hired Lynn Slade and his
15 firm. Yeah, they were the -- I don't recall how we
16 found them exactly, but they came billed as one of
17 the -- sort of the best firms in the country on --
18 specifically on or dealing with Indian tribe
19 matters. So that's who we hired.

20 **Q Okay. And how did you become aware of**
21 **their representation or of them, as you described**
22 **it, you know, being involved or focusing on Native**
23 **American matters?**

24 A I don't recall specifics about how we were
25 introduced to them.

<p>Page 66</p> <p>1 Q Okay. And do you recall what</p> <p>2 representations Tradewind made to EGPNA or any other</p> <p>3 Enel subsidiary about the rights of Osage regarding</p> <p>4 the wind project?</p> <p>5 A I can't -- I can't quote reps, no, on a</p> <p>6 transaction from seven years ago, eight years ago.</p> <p>7 Q Okay. Regarding specifically this term</p> <p>8 that we were discussing, governmental authority, do</p> <p>9 you have any knowledge as to which entity wanted</p> <p>10 this term included in the agreement?</p> <p>11 A No.</p> <p>12 Q Do you know who was responsible for</p> <p>13 drafting this term in the agreement?</p> <p>14 A I don't even remember who originated the</p> <p>15 original draft of the agreement. I don't know</p> <p>16 whether it came -- the original draft came from Wind</p> <p>17 Capital Group or if it came from Tradewind, so, no,</p> <p>18 I don't recall.</p> <p>19 Q Okay. So you don't know what attorney</p> <p>20 drafted the whole agreement?</p> <p>21 A No. I mean, it would -- somebody would</p> <p>22 have created a first draft, and then it would have</p> <p>23 been negotiated from there, and I don't recall who</p> <p>24 created the first draft, no.</p> <p>25 Q Okay. Who was involved in the different</p>	<p>Page 67</p> <p>1 certificate, order, consent, registration,</p> <p>2 exemption, consultation, variance, filing or other</p> <p>3 form, permission or review required under or issued</p> <p>4 pursuant to any environmental law or by any</p> <p>5 governmental authority." Do you see that</p> <p>6 definition?</p> <p>7 A Yes.</p> <p>8 Q And now, do you agree that this definition</p> <p>9 of the term, permit, excludes permits from the Osage</p> <p>10 Minerals Council, since governmental authority is</p> <p>11 defined explicitly to exclude Native American</p> <p>12 tribes?</p> <p>13 MR. BALL: Objection to form.</p> <p>14 A Yeah, I don't -- I guess I don't feel like</p> <p>15 I can sit here on the fly and make an assessment of</p> <p>16 what the legal interpretation of this would be.</p> <p>17 Q (By Ms. Baker) Well, as a layperson and</p> <p>18 as a CEO who was involved in this transaction and</p> <p>19 even in the specific agreement, you saw that the</p> <p>20 governmental authority provision excludes Native</p> <p>21 American tribes from being governmental authorities,</p> <p>22 so if a tribe was not a governmental authority, does</p> <p>23 that mean a tribe, such as Osage, could not have</p> <p>24 issued a permit based on this definition?</p> <p>25 MR. BALL: Objection, form.</p>
<p>Page 67</p> <p>1 iterations and revisions to the agreement?</p> <p>2 A I don't -- I don't -- I don't have</p> <p>3 specific recall on that, other than what I've</p> <p>4 already said, which is, typically, Steve Willman and</p> <p>5 I would have been working on a document with the</p> <p>6 support of my team, and then at some point -- I</p> <p>7 mean, I can't -- I can't even -- well, I guess</p> <p>8 presumably Enel -- somebody at Enel would do this as</p> <p>9 well, but I don't recall who was involved on their</p> <p>10 side.</p> <p>11 Q Were you personally involved in the</p> <p>12 creation of this agreement or providing advice about</p> <p>13 this agreement?</p> <p>14 A I would have reviewed the agreement, yeah,</p> <p>15 for sure.</p> <p>16 Q Did you have any input into the terms?</p> <p>17 A Yeah. I mean, I certainly would have</p> <p>18 had -- yeah, I would have had input.</p> <p>19 Q And do you recall this specific term, this</p> <p>20 definition, governmental authority?</p> <p>21 A No, I don't.</p> <p>22 Q Okay. Let's go ahead and turn in this</p> <p>23 same exhibit to page 21253, scroll down just a bit.</p> <p>24 We're looking for the definition of permit here.</p> <p>25 And so permit is defined as "Any license, permit,</p>	<p>Page 68</p> <p>1 A Yeah, I guess all I can do is read these</p> <p>2 two paragraphs that you are reciting, and, yeah, it</p> <p>3 appears as though -- it appears as though it is, I</p> <p>4 guess, as you described it, that permit -- permit</p> <p>5 references governmental authority, and you are</p> <p>6 saying governmental authority under the prior</p> <p>7 definition excludes stuff related to the Indian</p> <p>8 Affairs, so I don't know what else to add to that.</p> <p>9 Q (By Ms. Baker) Okay. And operating under</p> <p>10 the assumption that tribal permits are excluded from</p> <p>11 the definition of permit here, who would have made</p> <p>12 the decision to exclude tribal permits?</p> <p>13 A I don't -- I just simply don't -- I just</p> <p>14 don't recall any -- I don't recall any -- any debate</p> <p>15 or discussions negotiating around these terms, so I</p> <p>16 can't -- it's just not ringing a bell with me. So I</p> <p>17 can't tell you who -- you know, who would have --</p> <p>18 who would have pulled -- you know, I guess made a</p> <p>19 decision, which I think is kind of what you are</p> <p>20 driving at. I mean, again, all I can tell you is</p> <p>21 that the team -- the team involved in it would have</p> <p>22 been Steve Willman, myself, Matt Gilhousen, some of</p> <p>23 the guys and gals at Tradewind that were looking at</p> <p>24 reps and warranties, et cetera, Lynn Slade, if we</p> <p>25 had hired him at that point. So I don't know what</p>

<p>Page 70</p> <p>1 else -- I can't tell you -- are you asking for a 2 name of a person or what? What are you asking for? 3 Q Or even which entity might have wanted 4 permits to exclude tribal permits? 5 MR. BALL: Objection to form. 6 A Yeah, I just don't -- I mean, I can't -- I 7 don't recall any discussion around this specific 8 language or these definitions, so -- 9 Q (By Ms. Baker) Okay. 10 A -- I can't really go further than that. 11 Q Okay. At the point in time when this 12 agreement was drafted and entered into, had a 13 determination been made yet that the project did not 14 need a permit from the Osage Nation or the Osage 15 Minerals Council? 16 A I don't recall the specific timing of 17 conclusions that we -- that we reached with the 18 advice of Lynn Slade. I can say that I don't recall 19 our advisers ever concluding or, you know, 20 suggesting to us that we needed a permit from the 21 Osage, and my presumption would be that we reached 22 that conclusion or we got comfortable with that 23 issue before we bought the project. So we -- yeah, 24 so we -- yeah, we were -- that was definitely not 25 identified as a permit that we would need, and to</p>	<p>Page 72</p> <p>1 Q Okay. So -- 2 A -- I think as far as we knew, it was a 3 settled matter, and we were getting the advice of 4 Lynn Slade and his team that we didn't need 5 anything. 6 Q Okay. So you got that advice from 7 Mr. Slade prior to entering into this agreement to 8 purchase the project? 9 MR. BALL: Objection to form. 10 A Yeah. Okay. Well, so I'll just repeat 11 what I already said, which is, I really can't recall 12 the specific dates of conversations, but I would 13 feel pretty confident that we got the advice before 14 we bought the project, or we wouldn't have bought 15 it. The only -- the only thing that I can say that 16 would have been a way to manage through that, if 17 those conversations don't line up exactly that way, 18 is essentially we would not take risk, i.e., pay a 19 bunch of money for a project that we -- we aren't 20 highly confident that we are going to be able to 21 sell and make money on. That was our business. 22 So we would not have stepped into a -- you 23 know, sort of a fully exposed risk position in the 24 project, not knowing the answer to that question. 25 Our job was to, as Tradewind -- I said this earlier</p>
<p>Page 71</p> <p>1 the contrary, we were advised that we did not need 2 anything. 3 Q Okay. Were you advised to that effect at 4 the time this agreement was entered into? 5 A Again, I can't -- I just can't -- I 6 don't -- I can't give you the days and months, but 7 my -- my assumption would be -- there's no question 8 that we got comfortable with this issue before we 9 bought the project, or we wouldn't have bought it. 10 We didn't -- our job was to buy projects that we 11 knew -- that we knew exactly what we needed and we 12 would be confident that we could complete. So that 13 was not an issue that was raised as a problem or, 14 you know, something that we needed in addition to 15 the project at the time we bought it. 16 Q So at the time you bought the project, you 17 would not have done that unless you were comfortable 18 regarding the permit question, and did you rely on 19 Mr. Slade's advice or any other counsel's advice to 20 become that comfortable? 21 A For sure, yeah, and by virtue of the fact 22 that, no doubt, we were aware that there had been 23 litigation prior to the time that we bought the 24 project and that that suit had been -- had concluded 25 in favor of the project, and so --</p>	<p>Page 73</p> <p>1 on, but our job as developers was to acquire permits 2 that we needed to have for a project, and to the 3 extent that -- to the extent that permits weren't 4 yet required, but that they would be required in the 5 context of construction and operations, we would -- 6 we would identify those typically. So we were 7 all -- we were all over -- we were all over that 8 kind of stuff in the development phase. 9 Q (By Ms. Baker) Okay. Do you recall 10 whether Mr. Slade continued to advise Tradewind 11 regarding the need for a permit after the purchase 12 took place? 13 MR. BALL: Objection to form, assumes 14 facts not in evidence. 15 Q (By Ms. Baker) And Mr. Freeman, let me 16 back that up for a second. Did Mr. Slade continue 17 to provide advice regarding the need for a permit 18 after Tradewind purchased the project? 19 MR. BALL: Objection to form, assumes 20 facts not in evidence. 21 THE WITNESS: Should I still answer that? 22 MR. MAY: Yes. 23 A So I'll just repeat myself. I don't 24 recall specific dates and chronology here, but Lynn 25 Slade was an ongoing adviser to Tradewind,</p>

<p>Page 74</p> <p>1 specifically on the tribal issues, and I would say</p> <p>2 that he advised us all the way up to the moment of</p> <p>3 selling the project.</p> <p>4 Q (By Ms. Baker) And what did he advise you</p> <p>5 regarding, in light of the fact that you were</p> <p>6 already comfortable that no permit was necessary?</p> <p>7 A We would have had him -- we would have had</p> <p>8 him looking -- we were relying on him to tell us</p> <p>9 what we needed. Now, typically, when -- at</p> <p>10 Tradewind when we talk mineral interest, we're --</p> <p>11 we're thinking oil and gas, and we would encounter</p> <p>12 that all the time. We have lots and lots of</p> <p>13 projects that are built on surface estates that have</p> <p>14 oil and gas, active oil and gas operations ongoing.</p> <p>15 So permitting with respect to mineral interest</p> <p>16 owners would in all cases -- we would be thinking</p> <p>17 about oil and gas, as Tradewind, to be clear, our</p> <p>18 team.</p> <p>19 With that being said, again, we hired Lynn</p> <p>20 Slade to tell us or to identify what we need to know</p> <p>21 as relates to the Indian tribe as we were in the</p> <p>22 process of acquiring and selling the project.</p> <p>23 Q Okay. Let's go ahead and take a look at</p> <p>24 page Bates stamped 21268 of this document. A</p> <p>25 representation is made here that "The company is in</p>	<p>Page 76</p> <p>1 A Okay.</p> <p>2 Q So the question is whether anyone at</p> <p>3 Tradewind took steps to determine whether the</p> <p>4 statement we're discussing is true? And we're going</p> <p>5 to scroll back down, and, again, that's 21268, right</p> <p>6 here. So did Tradewind take any steps to determine</p> <p>7 whether this statement was accurate?</p> <p>8 A Well, we would do due diligence on a</p> <p>9 project to -- as best we can to try to make sure</p> <p>10 that we're comfortable with what we're buying, but</p> <p>11 we're relying -- when the other party makes a rep,</p> <p>12 we're relying on the other party from a legal</p> <p>13 perspective, right?</p> <p>14 Q Do you make that reliance without</p> <p>15 undertaking any analysis or investigation of your</p> <p>16 own?</p> <p>17 A Ultimately I would say the answer, yes, we</p> <p>18 do due diligence on projects, but when you're</p> <p>19 talking reps, I would say that we're relying on the</p> <p>20 entity making the rep that they did -- they are not</p> <p>21 committing fraud, that they are being truthful and</p> <p>22 that they have the -- they have the resources to</p> <p>23 back up -- back up the rep they are making.</p> <p>24 Q Okay. When this agreement was signed,</p> <p>25 August 2013, is it true that neither Tradewind nor</p>
<p>Page 75</p> <p>1 compliance in all material respects with all permits</p> <p>2 of the extent -- excuse me, to the extent obtained,</p> <p>3 and has paid all amounts currently due under all</p> <p>4 obtained permits." Do you see this line?</p> <p>5 A Yes.</p> <p>6 Q Okay. Did anyone at Tradewind or on the</p> <p>7 Tradewind board of directors, prior to approving</p> <p>8 this agreement, undertake any analysis to determine</p> <p>9 whether this statement was true?</p> <p>10 A Sure. We wouldn't have made -- what --</p> <p>11 sorry, what section are we in here in this document?</p> <p>12 What's the -- what's the heading of this section?</p> <p>13 MS. BAKER: Ridge, would you mind</p> <p>14 scrolling up.</p> <p>15 A Keep going higher, because you said we're</p> <p>16 in the rep section, but I want to understand, is</p> <p>17 this the buyer -- seller reps or buyer reps?</p> <p>18 Q (By Ms. Baker) So we have representations</p> <p>19 and warranties of seller.</p> <p>20 A So we're talking about Wind Capital Group</p> <p>21 here?</p> <p>22 Q Yes.</p> <p>23 A Okay. So this is Wind Capital Group's</p> <p>24 reps?</p> <p>25 Q Yes.</p>	<p>Page 77</p> <p>1 Osage Wind nor EGPNA had a permit from the Osage</p> <p>2 Nation to mine the Osage Mineral Estate?</p> <p>3 A Well, we didn't -- to my recollection we</p> <p>4 didn't -- we were advised that we didn't need a</p> <p>5 permit, and we didn't have -- we didn't have a</p> <p>6 permit, regardless of what it was. And I do know</p> <p>7 that there were ongoing conversations between the</p> <p>8 Tradewind team and the Osage, and the Osage had not</p> <p>9 identified a permit. No one had identified a</p> <p>10 permit.</p> <p>11 Q Who was having conversations with Osage on</p> <p>12 Tradewind's side?</p> <p>13 A I don't recall the specific people.</p> <p>14 Q Do you recall who they spoke with at</p> <p>15 Osage?</p> <p>16 A That -- yeah, that I don't know. I was</p> <p>17 never in those meetings. I was never in those</p> <p>18 meetings, so, yeah, since I wasn't in them, I</p> <p>19 can't -- I can't tell you who was there.</p> <p>20 Q Okay. So to be clear, Tradewind did</p> <p>21 conduct due diligence for this agreement, but not</p> <p>22 specifically with respect to this provision that's</p> <p>23 highlighted?</p> <p>24 MR. BALL: Object to the form.</p> <p>25 A No, that's not -- I don't think that's</p>

<p>1 what I said.</p> <p>2 Q (By Ms. Baker) Okay.</p> <p>3 A So we would do due diligence on all</p> <p>4 aspects of a project, which would certainly include</p> <p>5 permitting for sure. My point simply is that we --</p> <p>6 we would -- we would, nonetheless, be relying on the</p> <p>7 seller in this case, we would be relying on their --</p> <p>8 when they make a rep that they are being truthful</p> <p>9 about their rep, but, yeah, our team would have been</p> <p>10 conducting due diligence and identifying all the</p> <p>11 permits that the project has, the permits that it</p> <p>12 needs that it doesn't have, ultimately in building a</p> <p>13 picture on what the risk profile of the project is.</p> <p>14 Q You mentioned that Tradewind did become</p> <p>15 comfortable with the idea that a permit wasn't</p> <p>16 necessary. Did you personally reach that</p> <p>17 conclusion? Did you become comfortable that no</p> <p>18 permit was necessary?</p> <p>19 A Yes.</p> <p>20 Q Okay. And what caused you to be</p> <p>21 comfortable with that?</p> <p>22 A Well, the advice of our counsel and -- and</p> <p>23 the due diligence that the team was working on, the</p> <p>24 conversations that were happening with the Osage,</p> <p>25 yeah, all of that, all of that, ultimately, you</p>	<p>Page 78</p> <p>1 in a project or that could even -- I guess that</p> <p>2 could raise issues. So just to give you a few</p> <p>3 examples, as a developer, you know, we would be</p> <p>4 talking, obviously, to the landowners, both the</p> <p>5 surface estate, mineral interest owners, which, as I</p> <p>6 mentioned, typically would be oil and gas owners,</p> <p>7 local officials, county, planning and zoning.</p> <p>8 One thing that we have to do, and I would</p> <p>9 include this in the definition of constituent, is if</p> <p>10 there are sort of community activist types that want</p> <p>11 to stop a project, even if they have no -- they have</p> <p>12 no standing, we would have -- we would have public</p> <p>13 meetings, invite everyone, including people who were</p> <p>14 opposed to projects, and we would have conversations</p> <p>15 with all of these people, regulators, state, local,</p> <p>16 federal regulators, the people that were -- you</p> <p>17 know, that were regulating or overseeing</p> <p>18 environmental matters, like -- well, threatening</p> <p>19 endangered species and cultural resources.</p> <p>20 So we would talk to everybody around</p> <p>21 projects, and so our -- our meetings and discussions</p> <p>22 with the Osage would have been very consistent with</p> <p>23 that approach.</p> <p>24 MR. BALL: Counsel, I'm seeing a message</p> <p>25 that the U.S. is disconnected.</p>
<p>Page 79</p> <p>1 know, comes together, in the form of, you know, a</p> <p>2 conversation between me and the team on, again, what</p> <p>3 we're buying and what we're selling.</p> <p>4 Q Okay. I know you mentioned you don't</p> <p>5 recall the specifics of the conversations with the</p> <p>6 Osage Nation. Were you aware of the specifics at</p> <p>7 the time of this agreement?</p> <p>8 A No, I don't -- I wasn't getting detailed</p> <p>9 descriptions of conversations that were happening in</p> <p>10 meetings that I was in, other than very -- just very</p> <p>11 high level kind of stuff. I think we -- I think --</p> <p>12 you know, we, as Tradewind -- we were aware, and I</p> <p>13 was involved in conversations along these lines with</p> <p>14 my team, is we were aware of the litigation history</p> <p>15 and how that was resolved, and we were -- we were</p> <p>16 communicating -- we were basically communicating</p> <p>17 with the Osage, like we did with all constituents</p> <p>18 around projects, and just, again, making sure</p> <p>19 that -- that we were checking all the boxes, and</p> <p>20 that would have been the extent of my personal sort</p> <p>21 of involvement or understanding.</p> <p>22 Q You mentioned the word, constituents, just</p> <p>23 now. What does that term mean?</p> <p>24 A Constituents would be basically anyone</p> <p>25 that would have any kind of an interest or a stake</p>	<p>Page 80</p> <p>1 THE VIDEOGRAPHER: Do we want to go off</p> <p>2 the record?</p> <p>3 MS. BAKER: Yes, please.</p> <p>4 THE VIDEOGRAPHER: We're off the record at</p> <p>5 11:18 a.m.</p> <p>6 (A recess was had.)</p> <p>7 THE VIDEOGRAPHER: We are back on the</p> <p>8 record at 11:20 a.m.</p> <p>9 MS. BAKER: Okay. Let's go ahead and</p> <p>10 turn, Ridge, to page 21257.</p> <p>11 Q (By Ms. Baker) Where it says, "delay in</p> <p>12 interim payment" up there towards the top, it states</p> <p>13 that "Tradewind may delay payment of an interim</p> <p>14 payment until after all pending or threatened</p> <p>15 claims, litigation, arbitration, administrative</p> <p>16 proceedings or any dispute initiated, brought or</p> <p>17 asserted by the United States, as trustee for the</p> <p>18 Osage Nation, or by the Osage Nation have been</p> <p>19 finally resolved, including all appeals and reviews</p> <p>20 thereof." Do you know why this was included in the</p> <p>21 agreement?</p> <p>22 A Just from reading this paragraph, it looks</p> <p>23 like it was designed to protect Tradewind as buyer</p> <p>24 from paying -- paying additional monies until</p> <p>25 certain risks were dealt with or issues were</p>

<p>1 handled.</p> <p>2 Q Okay. As far as those risks or issues, in</p> <p>3 2013 was there an expectation that there would be a</p> <p>4 lawsuit related to this wind farm project?</p> <p>5 A As in a new lawsuit?</p> <p>6 Q Yes.</p> <p>7 A Something --</p> <p>8 Q Or any lawsuit, yes, anything that hadn't</p> <p>9 taken place.</p> <p>10 MR. BALL: Objection to form.</p> <p>11 A I don't recall an expect- -- ask the</p> <p>12 question one more time.</p> <p>13 Q (By Ms. Baker) Sure. In 2013 was there</p> <p>14 an expectation that there might be a lawsuit related</p> <p>15 to the project?</p> <p>16 A I don't know. I don't think I would say</p> <p>17 there was an expectation of litigation.</p> <p>18 Q Okay. Were you involved in advising the</p> <p>19 Tradewind board of directors regarding this</p> <p>20 agreement?</p> <p>21 A Well, I didn't really advise the board,</p> <p>22 but -- in that sense, but I would have been working,</p> <p>23 presumably, directly with Mike Storch on this</p> <p>24 agreement, so, I think that's -- Mike, again,</p> <p>25 working for EGPNA.</p>	<p>1 business, that was part of what was agreed to is a</p> <p>2 board that Enel would have board seats on.</p> <p>3 Q Okay. So that was a term that Enel</p> <p>4 wanted, was to make sure that they had some folks on</p> <p>5 Tradewind's board?</p> <p>6 A Correct.</p> <p>7 Q Do you happen to know who was on the EGPNA</p> <p>8 board of directors at that time?</p> <p>9 A No.</p> <p>10 Q Do you recall if you advised the board of</p> <p>11 directors for EGPNA regarding the agreement?</p> <p>12 A My dealings were with the Tradewind board</p> <p>13 people, and then other -- other managers, senior,</p> <p>14 you know, managers or executives at EGPNA, I don't</p> <p>15 know whether they were on the EGPNA board or not.</p> <p>16 Q I'm sorry, did you say you did provide</p> <p>17 advice to those people?</p> <p>18 A Well, for example, I would have phone</p> <p>19 conversations with Steve Champagne from time to</p> <p>20 time. I have no idea whether Steve Champagne was a</p> <p>21 board member of EGPNA, as an example. Or Francesco</p> <p>22 Venturini or Toni Volpe, those kind of people.</p> <p>23 Q Okay. Do you know who was advising the</p> <p>24 EGPNA board?</p> <p>25 A I didn't have any dealings -- I didn't</p>
<p>1 Q Okay. Do you recall who was on the board</p> <p>2 of directors for Tradewind at the time of this</p> <p>3 transaction?</p> <p>4 A Not specifically. Mike -- I mean, I don't</p> <p>5 know that the whole board for sure, because I said</p> <p>6 this earlier in my testimony, but Mike Storch would</p> <p>7 have been on the board, and I -- I don't recall for</p> <p>8 sure from there.</p> <p>9 Q Do you recall whether any of the other</p> <p>10 board members were affiliated with Enel?</p> <p>11 A Yeah -- well, I don't -- I just don't</p> <p>12 recall the board composition at that time. As I</p> <p>13 explained earlier, it wasn't the same over the</p> <p>14 course of -- that partnership lasted for -- what was</p> <p>15 that -- 13 years, and the board composition changed</p> <p>16 over time, and I just don't -- I don't recall what</p> <p>17 it was at that time.</p> <p>18 Q Okay. Do you know why there would have</p> <p>19 been Enel folks on the board?</p> <p>20 A On the Tradewind board?</p> <p>21 Q Yes.</p> <p>22 A Yeah, I mean, sure, because they -- they</p> <p>23 owned a minority stake in the business, and that --</p> <p>24 that was part of the -- part of what was agreed to.</p> <p>25 When we brought them in as minority owners into the</p>	<p>1 have any dealings with the EGPNA board. Again, all</p> <p>2 my dealings were with the guys on the -- my official</p> <p>3 dealings were with people on the -- were with the</p> <p>4 Tradewind board, and then I would have conversations</p> <p>5 from time to time with other people in the EGPNA</p> <p>6 organization that were not necessarily on the</p> <p>7 Tradewind board.</p> <p>8 Q Okay. And on page Bates stamped 21260</p> <p>9 under Article 3, Representations and Warranties,</p> <p>10 under 3.1(y), bullet point 2 reads, "Neither seller</p> <p>11 nor company has received notice, formal or informal,</p> <p>12 of any material issues raised by any governmental</p> <p>13 authority with respect to the project."</p> <p>14 A Sorry, where are you again?</p> <p>15 Q I'm sorry, 3.1(y), this should be, I</p> <p>16 believe, on 26 -- 21260, it might be on 268. Okay.</p> <p>17 So this bullet where it says, essentially, that</p> <p>18 neither party has received notice of any material</p> <p>19 issues raised by a governmental authority with</p> <p>20 respect to the project.</p> <p>21 MR. BALL: Counsel, can I ask where you</p> <p>22 are reading from?</p> <p>23 Q (By Ms. Baker) I'm sorry, I'm looking</p> <p>24 right now to -- it's little -- yes, it's highlighted</p> <p>25 right there.</p>

<p>Page 86</p> <p>1 A Little Roman iii?</p> <p>2 MR. BALL: Little Roman iii?</p> <p>3 Q (By Ms. Baker) I apologize, that's</p> <p>4 actually not the -- we don't really need to find the</p> <p>5 specific definition, but let me ask you this. Would</p> <p>6 you consider a permit needed for construction of the</p> <p>7 wind towers to be material to the purchase of the</p> <p>8 project?</p> <p>9 MR. BALL: Object to the form.</p> <p>10 A Is a permit required for construction</p> <p>11 material to the decision to buy the project?</p> <p>12 Q (By Ms. Baker) Yes.</p> <p>13 A Is that your question?</p> <p>14 Q Yes.</p> <p>15 A Yes. Yeah, that would be considered</p> <p>16 material.</p> <p>17 Q Okay. On this page that we're still</p> <p>18 looking at here, the first highlighted paragraph</p> <p>19 there, it talks about material adverse effects on</p> <p>20 future development. Were there any discussions</p> <p>21 about issues that could have material adverse</p> <p>22 effects as that's used here, either before or after</p> <p>23 negotiation of the agreement?</p> <p>24 MR. BALL: Objection to form.</p> <p>25 A I just don't -- I don't recall any -- ask</p>	<p>Page 88</p> <p>1 vast majority don't have tribal -- don't have tribal</p> <p>2 interests, but we're dealing with state -- state</p> <p>3 permits all the time and county permits, those kind</p> <p>4 of things, and they will literally kill a project.</p> <p>5 So we would never buy a project that we didn't have</p> <p>6 a permit on it and we had concerns about whether we</p> <p>7 could get the permit. That would be -- we have to</p> <p>8 have some ability to determine that we know what we</p> <p>9 need and that we have confidence that we can get</p> <p>10 there. That's what we do.</p> <p>11 Q Okay. Let's move forward to 2014. Did</p> <p>12 Tradewind enter into a MIPA to sell Osage Wind to</p> <p>13 Enel Kansas in 2014?</p> <p>14 A Yes.</p> <p>15 Q Okay. As Tradewind's president or CEO,</p> <p>16 why did you want to sell the wind farm to Enel?</p> <p>17 A So we sold -- I described our business</p> <p>18 model earlier, we sold all projects that were</p> <p>19 "buildable."</p> <p>20 Q Okay.</p> <p>21 A We sold all projects that were buildable</p> <p>22 or became buildable to somebody, and in our wind</p> <p>23 business, it was almost -- almost all those projects</p> <p>24 were sold to Enel.</p> <p>25 Q Okay.</p>
<p>Page 87</p> <p>1 me the question one more time.</p> <p>2 Q (By Ms. Baker) Sure. Do you recall any</p> <p>3 communications about issues that could have a</p> <p>4 material adverse effect on future development?</p> <p>5 MR. BALL: Objection, form.</p> <p>6 MR. MAY: Do you need to see what that</p> <p>7 term means, material adverse effect (inaudible) --</p> <p>8 A Yeah, I mean, I understand what the</p> <p>9 concept is. Certainly the way we would define that</p> <p>10 would be different in every agreement, but I</p> <p>11 don't -- I don't -- no, I don't -- I mean, I come</p> <p>12 back to what I said earlier, which is we didn't</p> <p>13 identify any show stopper issues in the process of</p> <p>14 doing our due diligence on the project, and that</p> <p>15 included -- while you're raising issues about the</p> <p>16 tribe and the status of discussions with the tribe,</p> <p>17 again, I would just come back to the same point,</p> <p>18 which is we did not identify any permit that we were</p> <p>19 required to have by the tribe.</p> <p>20 Q (By Ms. Baker) Okay. Let's --</p> <p>21 A I mean, as you can imagine, if we</p> <p>22 identified any permit and there was concern over</p> <p>23 whether we could or couldn't get it, that's -- in</p> <p>24 our business, that's -- that's a deal killer, and we</p> <p>25 deal with that all the time. So most projects, the</p>	<p>Page 89</p> <p>1 A That's how we -- that's how we generated</p> <p>2 revenue.</p> <p>3 (Exhibit 79 marked for identification.)</p> <p>4 Q (By Ms. Baker) Okay. Got it. Let's go</p> <p>5 ahead and take a look at the document that's been</p> <p>6 previously marked Exhibit 79. That is Bates stamped</p> <p>7 Osage Wind 021119. Do you recognize this document?</p> <p>8 A Just seeing the title, but, yes, it looks</p> <p>9 like it's the document governing Enel buying the</p> <p>10 project -- or documenting Enel buying the project</p> <p>11 from Tradewind.</p> <p>12 Q Okay.</p> <p>13 A I mean, you'd have to scroll down to see</p> <p>14 the name of the project, it looks like.</p> <p>15 Q Let's go ahead and take a quick look at</p> <p>16 the --</p> <p>17 A It says something about the Osage project</p> <p>18 here.</p> <p>19 Q Okay. Here we go. Okay. So this looks</p> <p>20 familiar?</p> <p>21 A Yes.</p> <p>22 Q Okay. Based on your knowledge of this</p> <p>23 agreement, would you consider this to be an arm's</p> <p>24 length transaction between Tradewind and Enel</p> <p>25 Kansas?</p>

<p>Page 90</p> <p>1 A Yes.</p> <p>2 Q Okay. What is your understanding of what</p> <p>3 an arm's length transaction is?</p> <p>4 A Well, not with an affiliate.</p> <p>5 Q So arm's length transaction to you just</p> <p>6 means an affiliate was not the purchaser or the</p> <p>7 sell- -- or the seller?</p> <p>8 A In lay terms, yes.</p> <p>9 Q Okay.</p> <p>10 A Two unaffiliated, unrelated parties.</p> <p>11 Q Okay. On page 21123 -- Bates stamped</p> <p>12 21123 here, the preamble says that the 2013 MIPA,</p> <p>13 which we just looked at, was amended on October 25,</p> <p>14 2013, November 2, 2013, March 14, 2014, and</p> <p>15 April 15, 2014. So we're saying here -- the</p> <p>16 preamble says that the 2013 MIPA was amended four</p> <p>17 times. Do you know why these amendments were made?</p> <p>18 A I don't recall any specifics around the</p> <p>19 amendments, no.</p> <p>20 Q Okay. None of them?</p> <p>21 A No.</p> <p>22 Q Okay. And on page 4 of the MIPA, Bates</p> <p>23 stamped 21126, it says that closing will take place</p> <p>24 on or before September 18. We'll look at the</p> <p>25 definition of closing here. So did closing actually</p>	<p>Page 92</p> <p>1 Q (By Ms. Baker) Being the MIPA by which</p> <p>2 Tradewind purchased the project from Wind Capital</p> <p>3 Group.</p> <p>4 A Steve Willman would have been Tradewind's</p> <p>5 lawyer on the transaction document. Again, I've</p> <p>6 already mentioned that we had -- we had other firms,</p> <p>7 including Lynn Slade, advising Tradewind.</p> <p>8 Q So did any of these attorneys work on both</p> <p>9 documents, both MIPAs?</p> <p>10 A Yes, Steve Willman for sure --</p> <p>11 Q Okay.</p> <p>12 A -- would have been involved, and I don't</p> <p>13 recall -- I don't recall on Lynn Slade. He wouldn't</p> <p>14 have been responsible for the entire document, per</p> <p>15 se. You know, we had him specifically working,</p> <p>16 advising us on, you know, Indian issues, permitting</p> <p>17 issues and that kind of thing. He may have reviewed</p> <p>18 provisions in the document or documents. He may</p> <p>19 have done that, but I don't recall that</p> <p>20 specifically.</p> <p>21 Q Okay. So besides the attorneys that are</p> <p>22 entities to this agreement, was there anybody else</p> <p>23 involved in drafting the agreement?</p> <p>24 A Drafting the agreement? Well, again, I</p> <p>25 said, I don't really recall who was -- who was</p>
<p>Page 91</p> <p>1 take place on September 18, 2014?</p> <p>2 A I actually don't remember the day that it</p> <p>3 closed on, so, you know, all I can do is look at the</p> <p>4 date, but, yeah, I don't -- I don't recall.</p> <p>5 Q Do you recall who drafted this agreement?</p> <p>6 A This would have been Steve Willman, Rob</p> <p>7 Freeman, Mike Storch on the EGPNA side, and we -- I</p> <p>8 mean, we did these transactions many times, so...</p> <p>9 Q Okay. The attorneys that you just listed,</p> <p>10 did they represent or advise any other entities that</p> <p>11 were involved in the project?</p> <p>12 MR. BALL: Objection, form.</p> <p>13 A Steve Willman was counsel for Tradewind,</p> <p>14 and that was it. So he was never -- he was never</p> <p>15 counsel to Enel. He would have been conflicted on</p> <p>16 that. And then I don't know who -- I don't know --</p> <p>17 I don't know what firm was representing Enel on</p> <p>18 this, you know, if they even had an outside firm</p> <p>19 involved. I don't recall that on the transaction.</p> <p>20 Q (By Ms. Baker) Okay. Do you recall</p> <p>21 whether the attorneys who worked on this 2014 MIPA</p> <p>22 were the same attorneys who worked on the previous</p> <p>23 one?</p> <p>24 MR. BALL: Objection to form.</p> <p>25 A The previous one being --</p>	<p>Page 93</p> <p>1 involved on the EGPNA side, other than I'm confident</p> <p>2 in saying that Mike Storch would have been involved.</p> <p>3 I guess lawyers-wise, I don't know. So I'm -- I'm</p> <p>4 interpreting your question as you are saying a</p> <p>5 drafting question. We had a lot of reviewers.</p> <p>6 Drafting was, you know, a different matter. So</p> <p>7 drafting would have been more, you know, myself,</p> <p>8 Steve Willman, attorneys. If Lynn Slade was</p> <p>9 involved in any drafting, I don't recall. So that</p> <p>10 would have been the drafting team.</p> <p>11 Then we had a lot of reviewers. So the</p> <p>12 reviewers would have been, again, Matt Gilhousen,</p> <p>13 Geoff Coventry, some of the Tradewind team. There</p> <p>14 would have been a lot of people who looked at the</p> <p>15 document.</p> <p>16 Q Okay. Can you tell me why EGPNA was a</p> <p>17 party to this agreement?</p> <p>18 A No, I don't know. You would have to show</p> <p>19 me.</p> <p>20 Q Okay. So --</p> <p>21 A Just tell me again, you would have to go</p> <p>22 back to the top. Who was the buyer, the entity?</p> <p>23 MS. BAKER: Could we go ahead and scroll</p> <p>24 up here.</p> <p>25 A Yeah, so EGPNA joins -- so they are only</p>

<p>Page 94</p> <p>1 joining the agreement as relates to Section 1.2, and</p> <p>2 the buyer is Enel Kansas, LLC. So your question was</p> <p>3 again?</p> <p>4 Q (By Ms. Baker) Was whether or not EPGNA</p> <p>5 was a party to this agreement?</p> <p>6 A It looks like they were for a limited</p> <p>7 purpose.</p> <p>8 Q Okay. So --</p> <p>9 A Section 1.2, and I don't recall what 1.2</p> <p>10 says, so I would have to look at it.</p> <p>11 Q Okay. Let's go ahead and take a look at</p> <p>12 that. It's on page 21125, Section 1.2 here. Go</p> <p>13 ahead and take a second, please, to read that, if it</p> <p>14 refreshes your memory.</p> <p>15 A Well, I don't recall what the other</p> <p>16 sections say in reference to 1.1, 3.9 and 8.4. It</p> <p>17 looks like it pertains to payment, Tradewind getting</p> <p>18 paid, but I would have to see those provisions to be</p> <p>19 sure.</p> <p>20 Q Is it fair to say that EGPNA was the</p> <p>21 guarantor for this contract?</p> <p>22 MR. BALL: Objection to form.</p> <p>23 A Yeah, no, I mean, from what I'm seeing and</p> <p>24 my memory of how we would do these, they would not</p> <p>25 be a guarantor -- they are not a guarantor of the</p>	<p>Page 96</p> <p>1 cetera, we get reimbursed for costs, and then we</p> <p>2 would get paid a fee, and the fee would be our</p> <p>3 profit in the deal basically, and then after the</p> <p>4 moment in time at which Enel buys the project, then</p> <p>5 they start picking up all the costs. To the extent</p> <p>6 that invoices continue to come to Tradewind, we</p> <p>7 would have to send the invoices to Enel to pay in,</p> <p>8 you know, whatever interim period it takes to get --</p> <p>9 to notify people of the new owner to send their</p> <p>10 invoices to and that kind of thing.</p> <p>11 Q Okay. So who would be responsible for</p> <p>12 payment of the invoices?</p> <p>13 A At Tradewind or at Enel?</p> <p>14 Q Well, that's the question. Would Enel be</p> <p>15 responsible for paying invoices, would Tradewind?</p> <p>16 MR. BALL: Objection to form.</p> <p>17 A That's kind of an accounting department</p> <p>18 question, which is definitely not my -- my thing.</p> <p>19 All I can tell you is that if Tradewind paid the</p> <p>20 invoice after closing, after we sold it, it would be</p> <p>21 preapproved by Enel, and we would be reimbursed for</p> <p>22 it. But the -- the preference, the desire would be</p> <p>23 -- where possible, would be for Enel to be paying</p> <p>24 invoices.</p> <p>25 I think the one -- probably the one area</p>
<p>Page 95</p> <p>1 entire agreement. They are -- it looks like they</p> <p>2 are a guarantor of very specific obligations under</p> <p>3 the agreement, so we would have to look at what</p> <p>4 those specific obligations were.</p> <p>5 Q (By Ms. Baker) Okay. Let's turn to page</p> <p>6 21124, Section 1.1(b)i regarding development costs</p> <p>7 through the date hereof; transition. So this</p> <p>8 provision reads in part, "Seller has paid all</p> <p>9 invoices received to date and agrees it shall not</p> <p>10 pay any more invoices, but rather will provide the</p> <p>11 invoices to the accounts payable department at</p> <p>12 EGPNA." Do you see this language in here?</p> <p>13 A Yes, I spotted it.</p> <p>14 Q Okay. Great. So is seller Tradewind?</p> <p>15 A I think that's who was named up above.</p> <p>16 Q Okay.</p> <p>17 A I think that's what I saw, yeah.</p> <p>18 Q So why would invoices be sent from</p> <p>19 Tradewind to EGPNA?</p> <p>20 A Because once they buy the project, they</p> <p>21 are responsible for making -- paying all the</p> <p>22 expenses, and we're out at that point. So,</p> <p>23 typically, the way these things work, we sell the</p> <p>24 project, and we get paid, we get reimbursed for</p> <p>25 costs, reasonable -- reasonable costs, whatever, et</p>	<p>Page 97</p> <p>1 that that would really come up in the accounting</p> <p>2 world there would be on the leases, the real estate</p> <p>3 stuff. That was a fairly complicated thing to</p> <p>4 manage, because on any given site we would often</p> <p>5 have a substantial number of landowners, and we</p> <p>6 would have a history of sending out lease payments,</p> <p>7 you know, sometimes for years. Not on this project,</p> <p>8 because we hadn't owned it that long, but -- sorry,</p> <p>9 ignore what I just said.</p> <p>10 We would be sending out payments to the</p> <p>11 landowners, and I do think -- my memory is that it</p> <p>12 would oftentimes be difficult for Enel to just</p> <p>13 completely step straight in to sending out payments</p> <p>14 to landowners and not sort of messing that up, so</p> <p>15 there might have been a period of time where we</p> <p>16 continued to do that and they would reimburse us.</p> <p>17 Q Okay. To your knowledge was EPGNA's</p> <p>18 accounts payable department generally responsible</p> <p>19 for Enel entities outside of EGPNA?</p> <p>20 MR. BALL: Objection to form.</p> <p>21 A I have no idea on that.</p> <p>22 Q (By Ms. Baker) Okay. Let's look at page</p> <p>23 Bates stamped 021153. In Section 9.5 here it</p> <p>24 designates persons for the seller and buyer to whom</p> <p>25 notices and communications should be sent. Can you</p>

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1 tell me why the -- I'm sorry?

2 A I'm agreeing, yeah, okay.

3 **Q Okay. And then for notice to the buyer,**
4 **it looks like Michael Storch at EGPNA is listed; do**
5 **you see that?**

6 A You'll have to scroll down a little
7 further.

8 **Q Oh, yes.**

9 A Yes, I see it.

10 **Q Okay. Why wasn't someone from Enel Kansas**
11 **listed here?**

12 A I don't know what the -- I mean -- well,
13 all I can tell you is how we handle our project
14 subsidiaries, but I was not -- I don't have any
15 direct knowledge around how Enel staffed, so to
16 speak, its subsidiary companies. Did they have any
17 employees or not, did they second people to
18 subsidiaries, et cetera, so Mike Storch was the
19 EGPNA guy that I dealt with, which is what this is
20 indicating, and I mentioned that earlier, but you
21 are asking about the subsidiary that bought the
22 project; is that right?

23 **Q Yes.**

24 A I don't -- I don't know what -- that was
25 sort of an internal EGPNA thing. I wasn't involved

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1 with that.

2 **Q Okay. Do you --**

3 A I can say -- well, sorry, go ahead.

4 **Q Go ahead and finish your thought.**

5 A I was just going to say that Tradewind, we
6 set up project subsidiaries for our projects, but
7 the project companies didn't hire people.

8 **Q That actually kind of leads to my next**
9 **question. Did Osage Wind have employees?**

10 A Not that I recall. As Tradewind, we
11 would -- we would -- I think we did paper -- you
12 know, paper that kind of thing, so we had some kind
13 of a secondment or, in kind of lay terms, loaning --
14 you know, loaning people to project companies to
15 work on projects, but our project companies did not
16 hire people per se in general.

17 **Q Okay. You say "in general." Do you not**
18 **recall specifically with respect to Osage Wind?**

19 MR. BALL: Objection to form.

20 A I don't have -- I don't recall any project
21 companies that ever hired -- had employees, so
22 that's all I can say. I don't have any reason to
23 think that Osage would have been different.

24 **Q (By Ms. Baker) Okay. For purposes of**
25 **developing this agreement, who would have**

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1 **represented the interest of Osage Wind? Who would**
2 **have spoken for Osage Wind?**

3 A The project company?

4 **Q Yes.**

5 A Well, you are talking legal counsel?

6 **Q Legal or generally advocating for their**
7 **interests, so even one of the companies.**

8 A After Tradewind Energy acquired Osage,
9 then Steve Willman -- Steve Willman was counsel to
10 Tradewind and, in effect, counsel to the project
11 company, and the advocates are pretty much as I've
12 described them. So it would have been Steve
13 Willman, myself, as sellers, and then the other
14 members of the team as involved. And I've said this
15 also, but also we -- we had also retained Lynn Slade
16 and his firm, so they would have been involved on
17 behalf of Tradewind and the project company.

18 We would hire consulting firms as well,
19 but I don't recall whether we had -- I'm sure we had
20 consulting firms involved in something on the
21 project. We always did have third party consultants
22 involved, but I don't recall any specifics about
23 this project on any -- you know, any of the
24 consultants, any consultants per se.

25 **Q Okay. Do you know who would have hired**

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1 **those consultants?**

2 A Well, the answer is no in the sense of was
3 it Tradewind Energy, Inc. or Osage Wind Power, LLC
4 or whatever the name of the company was, because it
5 would take both forms on different projects. So
6 from a legal entity perspective, I'm not sure,
7 because sometimes we would use Tradewind Energy,
8 Inc., and sometimes we would use the project
9 company.

10 **Q Okay. Let's look at page 021142, Section**
11 **4.14(b). It states to the seller's actual**
12 **knowledge, all governmental approvals, permits,**
13 **licenses or exemptions from licensing for commercial**
14 **operation and maintenance are listed in Schedule**
15 **4.14(b) and, further, that the project is in**
16 **compliance in all material respects with all**
17 **permits. Do you see this language? Mr. Freeman, do**
18 **you see the language I'm referring to?**

19 A Well, I see the whole paragraph. I'm
20 trying to pick up on exactly the part you were
21 reading.

22 **Q So all governmental approvals, permits,**
23 **licenses or exemptions for commercial operation, and**
24 **maintenance of the project are listed in Schedule**
25 **4.14(b).**

<p>Page 102</p> <p>1 A Yes.</p> <p>2 Q It also states that the project is in</p> <p>3 compliance in all material respects with all</p> <p>4 permits. Do you know why this provision was</p> <p>5 included in the agreement?</p> <p>6 A Yeah. Tradewind would, typically -- on</p> <p>7 all of our projects that we were selling, we would</p> <p>8 typically have some kind of a rep -- is this in the</p> <p>9 rep section? I assume it is. We would have some</p> <p>10 kind of a rep on permits, the status of permits for</p> <p>11 the project, and so it looks like that is what this</p> <p>12 is pertaining to.</p> <p>13 Q So do you know who asked for this</p> <p>14 provision to be included in the agreement?</p> <p>15 A It was very standard -- it was just</p> <p>16 standard.</p> <p>17 Q Standard? Okay.</p> <p>18 A Yeah. I mean, they -- so I've kind of</p> <p>19 described already what the job of Tradewind was,</p> <p>20 but -- so Enel, as buyer, or any buyer, when they</p> <p>21 are getting ready -- when they are buying a project</p> <p>22 and they are planning on constructing a project,</p> <p>23 they want to be sure that it either has all the</p> <p>24 permits it needs or it can get permits that it</p> <p>25 doesn't -- that the project doesn't yet have, it can</p>	<p>Page 104</p> <p>1 A Under the agreement?</p> <p>2 MR. BALL: Object to the form.</p> <p>3 Q (By Ms. Baker) Yes.</p> <p>4 A Well, that's -- I mean, I wouldn't say --</p> <p>5 I wouldn't say yes to that question, no. I mean, I</p> <p>6 think, for one thing, it's qualified by what</p> <p>7 seller's actual knowledge is, but I think we're</p> <p>8 getting into kind of legal interpretations of the</p> <p>9 agreement, which I'm not very comfortable with.</p> <p>10 Q And I know we touched on the board of</p> <p>11 directors in 2013. I don't believe we talked about</p> <p>12 2014. Do you recall who was on the Tradewind board</p> <p>13 of directors in 2014?</p> <p>14 A No.</p> <p>15 Q Do you recall whether any of them happened</p> <p>16 to be affiliated with Enel?</p> <p>17 A We always had Enel affiliated board</p> <p>18 members.</p> <p>19 Q So how can this be an arm's length</p> <p>20 transaction if the board of directors signing off on</p> <p>21 the agreement includes Enel employees?</p> <p>22 A It's very common for minority shareholders</p> <p>23 to have board seats. I mean, I have one right now.</p> <p>24 I'm on a board of Savion, LLC. It's a development</p> <p>25 company, and I'm on the board, and actually I don't</p>
<p>Page 103</p> <p>1 get them. So they were -- they were very much, you</p> <p>2 know, I guess, at that point kind of relying on us</p> <p>3 to say, here's -- here's -- here's the permit</p> <p>4 situation.</p> <p>5 Q Okay. So do you understand the statement</p> <p>6 to release EGPNA from liability in the event</p> <p>7 Tradewind failed to get a necessary permit?</p> <p>8 A I can't --</p> <p>9 MR. MAY: Would you repeat that question,</p> <p>10 please?</p> <p>11 MS. BAKER: Sure.</p> <p>12 Q (By Ms. Baker) Is it your understanding</p> <p>13 that this statement releases EGPNA from liability in</p> <p>14 the event Tradewind fails to obtain a necessary</p> <p>15 permit?</p> <p>16 MR. BALL: Objection to form.</p> <p>17 A Releases Enel. This is -- this is a</p> <p>18 representation from seller, qualified by actual</p> <p>19 knowledge of what the project needs, right? So</p> <p>20 that -- I think you asked if it releases. I don't</p> <p>21 think it has the effect of releasing anyone. Is</p> <p>22 that a -- I guess is that what you are asking is,</p> <p>23 does suddenly the need for a permit go away?</p> <p>24 Q (By Ms. Baker) No. Is EGPNA no longer on</p> <p>25 the hook?</p>	<p>Page 105</p> <p>1 own -- I don't own anything, so yes, that's standard</p> <p>2 stuff.</p> <p>3 Q Okay. So do you think Enel employees were</p> <p>4 able to fairly represent Tradewind's interests?</p> <p>5 MR. BALL: Objection to form.</p> <p>6 A Enel didn't -- Enel didn't -- well, I</p> <p>7 mean, I guess the point is that there -- it was a</p> <p>8 bigger board. I mean, as board -- as directors,</p> <p>9 they had legal responsibilities to meet, as</p> <p>10 directors, yes, for sure. But they weren't the only</p> <p>11 members of the board, and, certainly, Matt and Geoff</p> <p>12 and I were all -- we all had -- I mean, basically,</p> <p>13 we had the controlling interest, so I don't know how</p> <p>14 else to answer that.</p> <p>15 Q (By Ms. Baker) Okay. That's fine. Do</p> <p>16 you recall an amended and restated Osage project</p> <p>17 loan agreement related to the project?</p> <p>18 A That term rings a bell, but I don't</p> <p>19 remember -- I don't really remember any specifics on</p> <p>20 it right off.</p> <p>21 (Exhibit 194 marked for identification.)</p> <p>22 Q (By Ms. Baker) Okay. Let's go ahead and</p> <p>23 take a look at Exhibit 194. This document was</p> <p>24 previously marked 194 and is Bates stamped Osage</p> <p>25 Wind 040156. Do you recognize this document?</p>

<p style="text-align: right;">Page 106</p> <p>1 A It sounds familiar. I would have to dig</p> <p>2 through it some more to speak -- yeah, to really</p> <p>3 speak to it.</p> <p>4 Q Okay. Let's scroll through quickly and</p> <p>5 get to the end and take a look at the signature page</p> <p>6 as well.</p> <p>7 A Go back to the first -- sorry, I want to</p> <p>8 see who the parties are to it. Okay.</p> <p>9 Q So under this agreement Tradewind was the</p> <p>10 borrower, correct?</p> <p>11 A Looks like it.</p> <p>12 Q Then Enel Kansas was the lender?</p> <p>13 A Yeah, I guess so, yeah.</p> <p>14 Q Can you explain the general purpose of</p> <p>15 this loan agreement?</p> <p>16 A Yeah, Enel funded -- Enel funded</p> <p>17 development of Tradewind's -- all of Tradewind's</p> <p>18 capital funding for development came -- well, one of</p> <p>19 two ways, either from Enel or -- and/or revenue from</p> <p>20 sales of projects. And the funding -- by and large</p> <p>21 the funding was typically loans, and it could be</p> <p>22 loans to Tradewind -- well, loans to Tradewind</p> <p>23 Energy I think and/or loans to project subsidiaries.</p> <p>24 Q Okay. Let's take a look at the page Bates</p> <p>25 stamped 040158. Under Section 1.1(f), EGPNA</p>	<p style="text-align: right;">Page 108</p> <p>1 elected by lender." So it looks like this is</p> <p>2 placing conditions that would need to be met for the</p> <p>3 lender or the affiliate to purchase Osage Wind's</p> <p>4 equity. Do you know what those conditions are?</p> <p>5 MR. BALL: Objection to form.</p> <p>6 A Okay. Sorry, I was trying to read all</p> <p>7 this. Can you ask me the question again?</p> <p>8 Q (By Ms. Baker) Sure. So it says subject</p> <p>9 to certain conditions the lender or affiliate will</p> <p>10 purchase the equity of Osage from borrower. What</p> <p>11 were those conditions?</p> <p>12 A Yeah, I don't know. Yeah, I don't have --</p> <p>13 I don't remember such an agreement.</p> <p>14 Q Do you know who the term, affiliate, would</p> <p>15 refer to in this circumstance, lender or an</p> <p>16 affiliate?</p> <p>17 A See it's capitalized, is it defined?</p> <p>18 Q It is, but do you have an understanding</p> <p>19 just based on your familiarity with the document of</p> <p>20 what that would mean?</p> <p>21 A I'm not that familiar with the document at</p> <p>22 this point. My understanding of the definition of</p> <p>23 affiliate would be along the lines of the definition</p> <p>24 you read earlier from the prior document, which</p> <p>25 would be a controlling -- a controlling concept.</p>
<p style="text-align: right;">Page 107</p> <p>1 obligations, it states that EGPNA shall be jointly</p> <p>2 and severally liable with lender to the borrower for</p> <p>3 a full and timely payment of and performance of</p> <p>4 lender's obligations to make advances to the</p> <p>5 borrower when required hereunder, subject to other</p> <p>6 terms and conditions hereof, and agrees to pay the</p> <p>7 borrower the amounts due hereunder within 10</p> <p>8 business days after the date of written notice from</p> <p>9 the borrower to EGPNA if such obligations were not</p> <p>10 paid when due. So aside from this obligation for</p> <p>11 EGPNA to pay Tradewind upon 10 business days'</p> <p>12 notice, do you know of any other obligations EGPNA</p> <p>13 had under this agreement?</p> <p>14 A I don't recall the specifics.</p> <p>15 Q Let's take a look at page --</p> <p>16 A I mean --</p> <p>17 Q Go ahead.</p> <p>18 A All I can react to is just what I'm seeing</p> <p>19 in that paragraph.</p> <p>20 Q Okay. Let's look at pages Bates stamped</p> <p>21 040158, that's the same page, under 1.1(e) it states</p> <p>22 that "The parties contemplate that, subject to</p> <p>23 certain conditions, lender or an affiliate thereof</p> <p>24 will purchase the equity of Osage from borrower on</p> <p>25 or before September 30th, 2014 or such later date as</p>	<p style="text-align: right;">Page 109</p> <p>1 MS. BAKER: Okay. Let's scroll up to</p> <p>2 definitions real quick and take a look at the</p> <p>3 definition of affiliate here. Do we have the</p> <p>4 definitions section in this document?</p> <p>5 Q (By Ms. Baker) It looks like the term may</p> <p>6 not actually be defined in this particular</p> <p>7 agreement. Given your experience and your</p> <p>8 familiarity with these projects and these companies,</p> <p>9 do you believe that EGPNA would be considered an</p> <p>10 affiliate for this purpose?</p> <p>11 A EGPNA would be considered an affiliate of</p> <p>12 who?</p> <p>13 MR. BALL: Object to the form. There's a</p> <p>14 definition of affiliate in the agreement.</p> <p>15 A It's capitalized, so I would assume it</p> <p>16 shows up somewhere in here.</p> <p>17 Q (By Ms. Baker) We can actually -- let's</p> <p>18 go ahead and move on. Were there any payment</p> <p>19 obligations between the parties to this loan</p> <p>20 agreement, outside of what's described in the loan</p> <p>21 agreement?</p> <p>22 A Payment obligations between who?</p> <p>23 Q The parties to this agreement, so that</p> <p>24 would be -- I believe EGPNA, Enel Kansas and</p> <p>25 Tradewind?</p>

<p>Page 110</p> <p>1 MR. BALL: Object to the form.</p> <p>2 Q (By Ms. Baker) We'll scroll up to the top</p> <p>3 to verify that.</p> <p>4 A So I don't recall any specifics to this --</p> <p>5 this contract. We did have -- and I mentioned this</p> <p>6 earlier, but we had a -- we had a partnership</p> <p>7 agreement between Enel and Tradewind that generally</p> <p>8 governed or provided for their right of first</p> <p>9 refusal to buy projects and then how projects would</p> <p>10 be paid for, and it was formulaic. I mean, it was</p> <p>11 pretty formulaic, I guess you could say.</p> <p>12 So I'm not exactly sure how broadly to</p> <p>13 interpret your question there, but I guess there may</p> <p>14 have been payment obligation type things in the</p> <p>15 partnership agreement that would relate to this,</p> <p>16 this transaction. Having said that, I mean,</p> <p>17 generally, we -- once we're down to the point of</p> <p>18 doing a contract like this, this set of contracts,</p> <p>19 everything governing the obligations of both parties</p> <p>20 should be covered here.</p> <p>21 Q Okay. Is there a reason that</p> <p>22 September 30th, 2014, would be the date chosen for</p> <p>23 the purchase to be concluded?</p> <p>24 A I have no idea where -- I don't remember</p> <p>25 anything about that date, any magic to that date.</p>	<p>Page 112</p> <p>1 speculating. I mean, I don't know the answer. I</p> <p>2 gave you my answer on the Tradewind side. We</p> <p>3 didn't -- our subsidiaries didn't hire employees.</p> <p>4 Q Okay. What were your responsibilities</p> <p>5 related to this loan agreement?</p> <p>6 A I would have -- I would have presumably</p> <p>7 reviewed it.</p> <p>8 Q Anything else?</p> <p>9 A I didn't usually draft per se, Steve</p> <p>10 Willman was really the drafter. Then I would</p> <p>11 review -- I would review Steve's drafting and on the</p> <p>12 Enel side, Mike -- Mike Storch. I don't know</p> <p>13 whether -- I don't know beyond Mike Storch who would</p> <p>14 have. I mean, they may have had, you know,</p> <p>15 finance -- a finance group or something like that</p> <p>16 that may have been involved on his side, but I don't</p> <p>17 know.</p> <p>18 Q Okay. Did this loan agreement put any</p> <p>19 responsibilities on you specifically?</p> <p>20 A On Rob Freeman?</p> <p>21 Q Yes.</p> <p>22 A No.</p> <p>23 Q Okay.</p> <p>24 A I hope not.</p> <p>25 Q Okay. Do you know why you were listed as</p>
<p>Page 111</p> <p>1 Q Okay.</p> <p>2 A It was probably something that was just</p> <p>3 negotiated. I guess -- let me say that differently.</p> <p>4 I don't think there was any magic to that date, no.</p> <p>5 Q Okay. Do you recall who drafted this loan</p> <p>6 agreement?</p> <p>7 A This would have been the same -- the same</p> <p>8 people involved on our side would have been myself,</p> <p>9 Steve Willman, maybe some additional reviewers, and</p> <p>10 then on the Enel side, Mike Storch would have been</p> <p>11 involved again, and I don't know others on his side.</p> <p>12 Q Let's turn to the page Bates stamped</p> <p>13 040163, Section 4.2. This provision designates the</p> <p>14 persons for the borrowers and lenders to whom all</p> <p>15 notices, requests and demands to or upon the</p> <p>16 respective parties should be sent. So it looks like</p> <p>17 for notices to be sent to the borrow -- borrower,</p> <p>18 you and Steve Willman are listed.</p> <p>19 A Okay.</p> <p>20 MS. BAKER: Let's scroll down a little bit</p> <p>21 and see that.</p> <p>22 A Yeah.</p> <p>23 Q (By Ms. Baker) Why wasn't anyone from the</p> <p>24 lender and Enel Kansas listed?</p> <p>25 A Don't know other than -- well, I'd be</p>	<p>Page 113</p> <p>1 the person to receive notice?</p> <p>2 A I think as CEO I showed up on all kind of</p> <p>3 things to get notices, so, yeah, that would have</p> <p>4 been standard.</p> <p>5 Q Do you know if you received any notices,</p> <p>6 requests or demands related to the agreement?</p> <p>7 A Not that I remember.</p> <p>8 Q Okay. And you've mentioned Steve Willman</p> <p>9 a number of times. Was he counsel to more than just</p> <p>10 Tradewind regarding this loan agreement?</p> <p>11 A He would have just been -- he was counsel</p> <p>12 to Tradewind and its affiliates.</p> <p>13 Q And who would its affiliates have been?</p> <p>14 A All the projects of subsidiary companies.</p> <p>15 Q And what projects' subsidiaries companies</p> <p>16 are we talking about here?</p> <p>17 A Well, an example would be Osage Wind</p> <p>18 Project, LLC. And, again, as I described earlier,</p> <p>19 every time we started a project, we would set up a</p> <p>20 separate LLC to own the project. So they were</p> <p>21 single -- you know, what you call single purpose</p> <p>22 LLCs, that each owned projects. Yeah, so Steve --</p> <p>23 Steve would have been the attorney for Tradewind and</p> <p>24 then all those companies. He never represented</p> <p>25 Enel, and couldn't. He would have been conflicted.</p>

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1 **Q Okay. Did he ever represent any**
2 **affiliates of Enel?**
3 A No -- well, not that I know of.
4 **Q Okay.**
5 A Certainly never came to me for permission
6 to represent Enel that I can ever recall.
7 **Q Did Steve Willman have any**
8 **responsibilities pertaining to the loan agreement?**
9 MR. BALL: Objection to form.
10 A Not that I'm -- no, I mean, not that I'm
11 aware of.
12 **Q (By Ms. Baker) Okay. Did you speak with**
13 **him?**
14 A This is, I think, again, a pretty
15 straightforward -- we did quite a few of these where
16 Enel is loaning money to Tradewind on projects that
17 Tradewind needs money to fund, and they loan based
18 on their comfort with the risk profile of the
19 project, you know, the status of the project.
20 **Q Let's take a look now at page Bates**
21 **stamped 40162. It's Section 3.2. It states that**
22 **Tradewind shall not on behalf of Osage or otherwise**
23 **allow Osage to undertake any of the following**
24 **actions relating to the Osage project without the**
25 **prior written approval of Enel Kansas, the lender --**

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1 **I'm sorry, the -- yes. And then Paragraph P on the**
2 **next page says, "issuing any limited or full notices**
3 **to proceed under any construction contract."**
4 A Okay.
5 **Q What's a limited notice to proceed?**
6 A The concept of limited notice to proceed
7 would be a subset of a larger contract to do
8 something, provide some kind of a service to a
9 project, et cetera, with a consulting firm. So
10 there would be a grand scope, a full scope under a
11 consulting agreement, and sometimes you would do
12 something called, you know, a limited -- it would be
13 a limited scope notice to proceed on something that
14 would be a subset of a larger scope.
15 **Q Okay. So what's the difference between**
16 **that and a full notice to proceed?**
17 A This is pure concept, but, again, the
18 concept is that full notice would be to fully engage
19 or to give the green light to the consultant or
20 whoever it is you are talking about, to give the
21 green light to fully proceed with whatever you've
22 engaged them to do, which would be -- it would be --
23 again, this is conceptual, but it would be the full
24 scope of the contract and presumably releasing the
25 full scope of the payment obligations, milestone

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1 payment schedule.
2 **Q Okay. So were limited notices to proceed**
3 **or a full notice to proceed used in regard to the**
4 **Osage Wind project?**
5 A I don't know the answer to that. These
6 are all very typical lender -- lender restrictions,
7 right? Would show up in any loan agreement where
8 the lender is putting a bunch of money out the door
9 in the form of loans and doesn't -- doesn't -- they
10 want to know what's going on with the project as
11 money is going out the door.
12 **Q So why would Enel Kansas want to provide**
13 **prior approval for notices to proceed?**
14 MR. BALL: Objection to form.
15 A Again, they -- it's -- it's the lender
16 wanting to be sure basically that they agree with or
17 are comfortable with how the project is proceeding
18 once they start pouring a lot of money into a
19 project. This would be -- what's the amount of this
20 loan, is it 35 million?
21 **Q (By Ms. Baker) I don't have that figure**
22 **right in front of me.**
23 A I think I saw that. At this stage -- my
24 impression at this stage is this is a commitment to
25 a very large project. Our normal projects like this

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1 would be 3 million -- \$3 million for the whole -- to
2 fully complete development of a project, so by just
3 comparison, you can imagine that when you are ready
4 to dump \$35 million into a project, you are getting
5 pretty pregnant, and so it's being -- it's being
6 watched very closely and sort of making sure that
7 the future buyer, i.e., Enel is comfortable with the
8 decisions that Tradewind is making with its money in
9 the form of a loan.
10 **Q So who at Enel Kansas would have approved**
11 **notices to proceed on behalf of Enel Kansas?**
12 MR. BALL: Objection, form.
13 A Who at Enel Kansas -- I don't -- I don't
14 know what the approval matrix was on that side.
15 **Q (By Ms. Baker) Okay. Just to make sure I**
16 **asked that question clearly, you don't know who**
17 **would have approved notices to proceed on behalf of**
18 **Enel Kansas?**
19 A Does the contract say who gets notices for
20 this kind of stuff? I think --
21 **Q Are you aware -- are you aware of who**
22 **would have actually approved those notices?**
23 MR. BALL: Objection to form.
24 A For this list of things here I'm looking
25 at?

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1 **Q (By Ms. Baker) Any notices to proceed.**

2 A Oh.

3 **Q So 3.2 --**

4 A Contractor -- I mean, no, I don't -- I

5 actually don't know the answer to that, because --

6 so Mike Storch was the counter-party on the

7 contract, but on something like a limited notice to

8 proceed, they would probably engage their

9 construction -- somebody from their construction

10 group or something like that. So I don't -- I don't

11 have any names for you there.

12 **Q Do you know who would have reviewed**

13 **notices to proceed?**

14 MR. BALL: Objection to form.

15 A Yeah, I just don't -- I don't -- I don't

16 have name -- no, I don't have names for you on --

17 **Q (By Ms. Baker) Okay.**

18 A -- any back and forth like that on the

19 project.

20 **Q Okay. Do you know whether construction**

21 **was ever halted at any point in time during that**

22 **construction process?**

23 A I don't know. Tradewind was not involved

24 in construction, to be clear.

25 **Q Did Tradewind --**

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1 A So a limited notice to proceed is not --

2 don't assume that that's construction related.

3 **Q Okay. So was Tradewind involved in any**

4 **way in the project after selling it to Enel Kansas?**

5 MR. BALL: Objection to the form.

6 A Yeah, I don't -- I can't say it wasn't

7 involved in any way. I don't recall any specifics

8 around that. All I can tell you is that we --

9 Tradewind definitively did not have anything to do

10 with construction ever. We were not -- we didn't --

11 we didn't have any people at Tradewind that knew

12 anything about construction, they never did

13 construction.

14 So I also mentioned this earlier, but when

15 we would have ongoing -- when we would have any

16 responsibilities beyond the date that we would sell

17 the project to Enel, it would be development later,

18 and I know you are -- you all are not in the

19 business, but it would not be construction. It

20 would be -- it would be somebody left a gate open on

21 a piece of property and the cows got out and the

22 landowner is upset and we need somebody to go out

23 and smooth things over with the landowner. That

24 would be something that Tradewind would do --

25 **Q (By Ms. Baker) Okay.**

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1 A -- after selling a project.

2 **Q Let's take a look at Subsection J at the**

3 **top of the screen that we're looking at. And this**

4 **subsection prohibits Tradewind from allowing Osage**

5 **Wind to finalize a material permit without prior**

6 **written approval from Enel Kansas. The term,**

7 **material, is not defined. Do you know what would**

8 **constitute a material permit?**

9 A No.

10 **Q Do you know why Enel Kansas would have**

11 **wanted to provide prior approval for material**

12 **permits?**

13 A The same -- same answer as for limited

14 notices to proceed. They are -- when they make a

15 significant loan to a project, they want to know at

16 that point everything that's happening on the

17 project.

18 **Q Okay. So do you know who would have**

19 **issued written approval to finalize material from it**

20 **on behalf of Enel Kansas?**

21 A I do not.

22 **Q Do you know how those material permits**

23 **were reviewed?**

24 MR. BALL: Objection to form.

25 A Enel had a --

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1 (Simultaneous speakers.)

2 A Sorry, are we okay? Much like Tradewind

3 had Jennifer Dean -- Jennie Dean, Enel had their own

4 head of environmental and permitting, and -- I don't

5 even recall her name right now, but I never really

6 personally dealt with her, but I think it was a gal.

7 But so, yeah, they had -- they had an in-house

8 person or staff that dealt with environmental and

9 permitting on their side, but I don't have a name

10 for you.

11 **Q You said in-house, would that be in-house**

12 **to Enel Kansas or to EGPNA or --**

13 A Somewhere in the EGPNA world. I don't --

14 I don't know.

15 **Q Enel or one of its affiliates or sub --**

16 A Right.

17 **Q -- entities? Okay.**

18 A Right. Right.

19 **Q For purposes of this provision, would a**

20 **lease from the OMC be considered material?**

21 A A lease from?

22 **Q The Osage Minerals Council.**

23 A If the project was going to go lease

24 property from the Osage Minerals Council, is that

25 the question?

<p>Page 122</p> <p>1 Q No, so lease or permit -- if a lease or</p> <p>2 permit was required from the Osage Minerals Council,</p> <p>3 would that be considered material?</p> <p>4 A Material in the context of not going and</p> <p>5 getting the permit without discussing it with Enel?</p> <p>6 Q Well, material in the context of this</p> <p>7 Subsection J. Again, we don't have the definition,</p> <p>8 so for purposes of this agreement, as you understand</p> <p>9 it and based on your experience.</p> <p>10 MR. MAY: What is it there's not a</p> <p>11 definition of? I'm sorry.</p> <p>12 MS. BAKER: Of material?</p> <p>13 A Material permit. Well, I guess I'm</p> <p>14 struggling a little bit with the question, because I</p> <p>15 had already said we -- we didn't identify a permit</p> <p>16 as being needed.</p> <p>17 Q (By Ms. Baker) Okay.</p> <p>18 A So what -- I don't -- I guess in that</p> <p>19 sense I don't understand why or -- I don't</p> <p>20 understand the question.</p> <p>21 Q Okay. If you had come out the other way</p> <p>22 and decided a permit was needed, would that permit</p> <p>23 be considered a material permit?</p> <p>24 A It depends on the nature of the permit,</p> <p>25 right? I can give you examples of permits that we</p>	<p>Page 124</p> <p>1 so not changing the project, not initiating new</p> <p>2 things with the project without Enel knowing about</p> <p>3 it. I don't think we can differentiate between</p> <p>4 these things otherwise. Again, I mean, I'm a guy</p> <p>5 that, you know, I've read my share of financing</p> <p>6 documents, and this is very standard stuff, where a</p> <p>7 lender is putting pretty tight controls on things</p> <p>8 once they start writing big checks.</p> <p>9 Q Do you know who was in charge of issuing</p> <p>10 approval for comment submissions on behalf of Enel</p> <p>11 Kansas?</p> <p>12 A I don't.</p> <p>13 Q Do you know who drafted this section of</p> <p>14 the loan agreement?</p> <p>15 A It would have been, again, presumably</p> <p>16 Steve Willman, with other reviewers, including</p> <p>17 myself, and then whoever was involved on the Enel</p> <p>18 side.</p> <p>19 (Exhibit 199 marked for identification.)</p> <p>20 Q (By Ms. Baker) Let's take a look now at a</p> <p>21 different document, it's Bates stamped Osage Wind</p> <p>22 040139, and I don't believe it's been marked yet, so</p> <p>23 it should be Exhibit 199.</p> <p>24 MS. BAKER: Ridge, please, correct me if</p> <p>25 I'm wrong, I believe it's 199.</p>
<p>Page 123</p> <p>1 would -- we would consider prudent or ministerial,</p> <p>2 almost rubber stamped or automatic to get, and then</p> <p>3 some can be really dicey and you don't know the</p> <p>4 outcome, and they can kill a project. So I can't --</p> <p>5 I can't speak hypothetically about the permit that</p> <p>6 we're not required to get, as to whether it would or</p> <p>7 wouldn't be material.</p> <p>8 Q So you don't know whether this Osage</p> <p>9 Minerals Council permit would be kind of a dicier</p> <p>10 issue or more of a ministerial one?</p> <p>11 MR. BALL: Objection, form.</p> <p>12 A Well, no, because there was no permit</p> <p>13 identified.</p> <p>14 Q (By Ms. Baker) Okay. Let's take a look</p> <p>15 again on this same page, Subsection O. So this is</p> <p>16 prohibiting Tradewind from allowing Osage Wind to</p> <p>17 submit comments with respect to a permit without</p> <p>18 Enel Kansas's prior written approval. Why did</p> <p>19 Tradewind agree that Enel Kansas would have to give</p> <p>20 prior approval for comments regarding a permit?</p> <p>21 A I would just say that all of this falls</p> <p>22 into the category of not -- not doing things with</p> <p>23 the project that are really anything other than just</p> <p>24 day -- you know, day-to-day things that are already</p> <p>25 understood, already in place, already being managed,</p>	<p>Page 125</p> <p>1 MR. HOWELL: That is correct.</p> <p>2 MR. MAY: Excuse me, this is Kirk. I need</p> <p>3 to take a break. I have a call I've got to make.</p> <p>4 It's going to take about 15 minutes.</p> <p>5 MS. BAKER: Okay.</p> <p>6 THE VIDEOGRAPHER: We're off the record at</p> <p>7 12:32 p.m.</p> <p>8 (A recess was had.)</p> <p>9 THE VIDEOGRAPHER: We're back on the</p> <p>10 record at 1:16 p.m.</p> <p>11 MR. FIELDS: So Stuart Ashworth for the</p> <p>12 United States, since he didn't make any comments,</p> <p>13 objections or otherwise in the first portion of the</p> <p>14 deposition, I'm going to take over for him in this</p> <p>15 second half. I'm Nolan Fields, Assistant U.S.</p> <p>16 Attorney. I've been in the room the whole time. I</p> <p>17 just wanted to clarify for the record that once the</p> <p>18 United States gets their turn, I'll be the one</p> <p>19 asking questions. Thank you.</p> <p>20 (Exhibit 36 marked for identification.)</p> <p>21 Q (By Ms. Baker) All right. Mr. Freeman,</p> <p>22 let's take a look at a document that has been</p> <p>23 previously marked Exhibit 36. That is Bates stamped</p> <p>24 Osage Wind Priv 000414. So this looks like a memo</p> <p>25 from Sarah Stevenson to Bill Scott entitled Rights</p>

<p style="text-align: right;">Page 126</p> <p>1 of Surface Owners to Use Soil, dated October 31,</p> <p>2 2013. Have you seen this memo before?</p> <p>3 A It does not ring a bell. Modrall and</p> <p>4 Sperling lawyers, is that -- is that -- that's Lynn</p> <p>5 Slade's firm? Is that correct?</p> <p>6 Q That's a question I would pose to you, if</p> <p>7 you are familiar with this law firm?</p> <p>8 A Yeah, I don't -- I mean, sorry, I'm --</p> <p>9 Q That's okay. So do you --</p> <p>10 A I don't recall the name of the firm. I</p> <p>11 just remember Lynn.</p> <p>12 Q Okay. Do you recognize the name Bill --</p> <p>13 I'm sorry, Sarah Stevenson?</p> <p>14 A I don't remember that name.</p> <p>15 Q Okay. Do you know who Bill Scott is?</p> <p>16 A No, I don't remember Bill Scott either.</p> <p>17 Q Did you or any of the defendants receive</p> <p>18 correspondence from the Osage Nation, or the OMC,</p> <p>19 the Osage Minerals Council, prior to October 31 of</p> <p>20 2013?</p> <p>21 MR. BALL: Objection to the form.</p> <p>22 MR. MAY: Who are the defendants, just for</p> <p>23 clarification?</p> <p>24 MS. BAKER: The defendants would be -- I'm</p> <p>25 sorry, the defendants in this litigation, so Osage</p>	<p style="text-align: right;">Page 128</p> <p>1 company involved with the Osage Wind project that</p> <p>2 they were illegally excavating the Osage Mineral</p> <p>3 Estate without a lease?</p> <p>4 MR. BALL: Objection to form.</p> <p>5 A Am I aware of that kind of communication</p> <p>6 being made by the Osage --</p> <p>7 Q (By Ms. Baker) The -- by the Bureau of</p> <p>8 Indian Affairs. Do you know whether BIA, Bureau of</p> <p>9 Indian Affairs notified Osage Wind, or any of the</p> <p>10 companies involved, that they were illegally</p> <p>11 excavating without the necessary lease?</p> <p>12 MR. BALL: Object to the form.</p> <p>13 A No.</p> <p>14 (Exhibit 200 marked for identification.)</p> <p>15 Q (By Ms. Baker) Okay. Let's take a look</p> <p>16 at a document that's been Bates stamped Osage Wind</p> <p>17 Priv 000672. We'll go ahead and mark this as</p> <p>18 Exhibit Number 200. This appears to be an email</p> <p>19 exchange between you and Mr. Slade dated October 25,</p> <p>20 2013. Do you recognize this email?</p> <p>21 A Not right off. No, not right off the top</p> <p>22 of my head.</p> <p>23 Q In this email you wrote to Mr. Slade, "I'm</p> <p>24 afraid to ask, given the long call yesterday, but</p> <p>25 I've been quietly wondering if there is some</p>
<p style="text-align: right;">Page 127</p> <p>1 Wind, LLC, EGPNA and Enel Kansas.</p> <p>2 A So rephrase the question. Or ask the</p> <p>3 question again, I should say.</p> <p>4 Q (By Ms. Baker) Sure. Well, have you --</p> <p>5 do you recall whether -- do you recall whether</p> <p>6 Tradewind received any correspondence from the Osage</p> <p>7 Nation or the Osage Minerals Council prior to</p> <p>8 October 31st, 2013?</p> <p>9 A I don't recall any specific -- written</p> <p>10 correspondence from the Osage, yeah, so I -- the</p> <p>11 date is sort of irrelevant. I'm not sure I</p> <p>12 understand why the date -- you are using the date,</p> <p>13 but, yeah, I don't -- I don't recall specific</p> <p>14 written correspondence.</p> <p>15 MS. BAKER: Ridge, we can go ahead and</p> <p>16 take this exhibit down.</p> <p>17 Q (By Ms. Baker) Do you recall when Osage</p> <p>18 Wind's project excavation started?</p> <p>19 A I don't know anything about when</p> <p>20 excavation started.</p> <p>21 Q Okay. Do you know when crushing the rocks</p> <p>22 started?</p> <p>23 A I don't know anything about that.</p> <p>24 Q Okay. Are you aware of the Bureau of</p> <p>25 Indian Affairs ever notifying Osage Wind or any</p>	<p style="text-align: right;">Page 129</p> <p>1 specific activity affecting minerals that by</p> <p>2 definition figures involvement of the BIA." This</p> <p>3 would be on page 673. So it starts with, I'm afraid</p> <p>4 to ask. Yes. Can you tell me why you were quietly</p> <p>5 wondering this?</p> <p>6 A I guess it would just -- I don't remember</p> <p>7 this email string, but I guess it would just fit</p> <p>8 into the category of what I've already described,</p> <p>9 which is we were diligencing the project and trying</p> <p>10 to determine what the project needed, right, so it</p> <p>11 appears as though I'm digging in with Lynn Slade, et</p> <p>12 al.</p> <p>13 I see George Knapp on there. As I recall,</p> <p>14 George Knapp was -- I think he was an attorney with</p> <p>15 Wind Capital Group. Right. So, yeah, so I guess it</p> <p>16 looks like I'm asking the question, trying to be</p> <p>17 absolutely sure that that's not the case.</p> <p>18 Q Okay. Was there anything that led you to</p> <p>19 ask that question?</p> <p>20 A I don't remember anything in particular in</p> <p>21 terms of the phraseology. I just don't remember.</p> <p>22 Q Do you remember how long that had been a</p> <p>23 concern of yours, how long you were wondering about</p> <p>24 it?</p> <p>25 A No.</p>

<p>Page 130</p> <p>1 Q Do you recall talking with anyone else at 2 all about that concern that you had?</p> <p>3 A I don't remember. I can't chapter and 4 verse, you know, specific conversations. So all I 5 can do is just say that we -- I'm repeating what 6 I've already said. We were aware there had been 7 litigation, right, so we knew that going into it, 8 and we were certainly digging in hard to make sure 9 that the litigation was resolved in favor of the 10 project, that there weren't lingering problems that 11 could be an issue for the project, and that's why we 12 hired Lynn Slade.</p> <p>13 Q Do you recall when you hired Lynn Slade?</p> <p>14 A No, I actually don't. I mean, I said 15 earlier that -- I don't recall the specific date 16 that we hired him, but my -- my assumption would be 17 that we hired him leading up to the acquisition of 18 the project to be sure that we knew what we were 19 getting, but I don't recall the specific date.</p> <p>20 Q Who from Tradewind provided Mr. Slade with 21 the facts about the project that you based his legal 22 analysis on?</p> <p>23 A Well, I don't -- again, I don't know 24 specific names. I don't recall who was involved at 25 that time. It would have been the Tradewind team,</p>	<p>Page 132</p> <p>1 derisked, and Lynn would have been part of that 2 effort.</p> <p>3 So he would have been on calls with a lot 4 of people, both from Tradewind, but also on the Wind 5 Capital Group side, I think, as evidenced by this 6 email string right here, asking questions of the 7 Wind Capital Group people about the project, among 8 other things.</p> <p>9 Q Okay. It looks like in this email 10 Mr. Slade is describing the project as simply moving 11 dirt. Let's see if we can find that language in 12 here. If you look at the bottom of -- okay. Even 13 at the bottom of 672 you'll see it says, the Nation, 14 or BIA less likely, could contend any movement of 15 dirt as invading the mineral estate. So it sounds 16 like Mr. Slade is saying, removal of dirt is what 17 the concern is, that's the activity that's being 18 undertaken in the construction process. Would you 19 describe what was going on as simple removal of 20 dirt?</p> <p>21 A We're not involved in construction here.</p> <p>22 Q Okay.</p> <p>23 A So this is all -- this would be completely 24 prospective, and I would say -- I would say probably 25 loose in terms of terminology. So, yeah -- so we're</p>
<p>Page 131</p> <p>1 so to speak, and, again, Matt Gilhousen was the CEO, 2 so he would have been involved, but Matt would have 3 to tell you who was on the -- who was on the due 4 diligence team. Ultimately, Aaron Weigel was 5 responsible for that project, but I don't -- I don't 6 even recall the timing of when Aaron picked it up 7 and it was his -- his baby.</p> <p>8 Q Okay. Did you personally provide any 9 facts about the project to Mr. Slade?</p> <p>10 A Any facts about the project? Meaning the 11 development itself?</p> <p>12 Q What the project consisted of, what he 13 needed to formulate his opinion.</p> <p>14 A I would not have been the proper source of 15 details about the project for Lynn Slade, because 16 I'm not -- I wasn't in the details like that as the 17 CEO, and leading up to the acquisition of the 18 project, he would have essentially been sort of part 19 of the due diligence effort, right, so we're all 20 asking a lot of questions of David Boyce and George 21 Knapp and whoever the names are at Wind Capital 22 Group, most of which I don't recall. So we had a 23 team of people that were asking questions, digging 24 in, turning over all the rocks to be sure that it 25 was a project that, again, could get completely</p>	<p>Page 133</p> <p>1 definitely not involved in construction at this 2 stage, and so, you know, that's -- that's nothing 3 that I can opine about.</p> <p>4 (Exhibit 81 marked for identification.)</p> <p>5 Q (By Ms. Baker) Okay. Let's take a look 6 at another document that has been previously 7 marked -- that has been previously marked as Exhibit 8 81, and this is Docket 17-4 in the pending 9 litigation. It's another version of this memo. 10 Were you aware -- were you aware that the advice 11 provided by Mr. Slade kind of evolved over the 12 course of his involvement with the project?</p> <p>13 MR. BALL: I'm going to object.</p> <p>14 A I don't know what that's referring to, no.</p> <p>15 Q (By Ms. Baker) Okay. Taking --</p> <p>16 A Hold -- I guess I want to keep just kind 17 of keep coming back to, our job was to find out if 18 we needed a permit, and we were told that we didn't 19 need a permit. And there were no -- there was no 20 sort of caveats or qualifiers to that to Tradewind. 21 Well, if you do this, you don't need a permit; if 22 you do that, you need a permit. Our advice was, you 23 don't need a permit.</p> <p>24 Q Okay. I'm going to take a step back real 25 quick. You've mentioned before that Tradewind was</p>

<p>Page 134</p> <p>1 not involved in the actual construction. So who</p> <p>2 determined what construction method would be used?</p> <p>3 A I don't know.</p> <p>4 Q You don't know if that was Enel or Enel</p> <p>5 Kansas or which company might have made the decision</p> <p>6 about how --</p> <p>7 A No, I don't -- you'll have to ask --</p> <p>8 you'll have to ask the Enel folks that question.</p> <p>9 All I can tell you is for damn sure it was not</p> <p>10 Tradewind.</p> <p>11 MS. BAKER: I'd like to take a five-minute</p> <p>12 break. I know we just took a break, but it will be</p> <p>13 five minutes. If we can go off the record real</p> <p>14 quickly.</p> <p>15 THE VIDEOGRAPHER: We're off the record at</p> <p>16 1:32 p.m.</p> <p>17 (A recess was had.)</p> <p>18 THE VIDEOGRAPHER: We are back on the</p> <p>19 record at 1:42 p.m.</p> <p>20 Q (By Ms. Baker) Mr. Freeman, I thank you</p> <p>21 very much for your time. I don't actually have any</p> <p>22 further questions right now. So I'll be turning</p> <p>23 this over to the United States. Thank you.</p> <p>24 A Appreciate it.</p> <p>25 DIRECT EXAMINATION</p>	<p>Page 136</p> <p>1 Q (By Mr. Fields) Okay. So would you have</p> <p>2 any knowledge about the setback distances that would</p> <p>3 need to be spaced around wind turbines or other</p> <p>4 varied infrastructure that's related to allowing the</p> <p>5 turbines to generate energy, so as to not disrupt</p> <p>6 their sub-adjacent support?</p> <p>7 A Setbacks, that's kind of -- when you use</p> <p>8 the word, setback, I think of a set -- of a distance</p> <p>9 of removal of a turbine from something, you know, a</p> <p>10 structure, a house, whatever. Those change from</p> <p>11 county to county, so it would depend on what -- it</p> <p>12 would depend on where you are.</p> <p>13 Q So I'm not asking about what other</p> <p>14 structures would have to be set back from the</p> <p>15 turbine. I guess another way of describing it would</p> <p>16 be, are you aware of the area immediately</p> <p>17 surrounding the turbine that would have to be left</p> <p>18 undisturbed by other construction or excavation, so</p> <p>19 that the turbine wouldn't be compromised from an</p> <p>20 engineering standpoint?</p> <p>21 A You're asking what -- what would --</p> <p>22 Tradewind, as a developer, is going to ultimately</p> <p>23 result in the construction of a wind project. What</p> <p>24 would you be concerned with in terms of things being</p> <p>25 erected around turbines and the distance of those</p>
<p>Page 135</p> <p>1 BY MR. FIELDS:</p> <p>2 Q Mr. Freeman, can you hear me?</p> <p>3 A Yes.</p> <p>4 Q Okay. I just want to make sure I'm being</p> <p>5 loud enough. Thank you for your time this morning</p> <p>6 and now into this afternoon. I'll do my best to get</p> <p>7 through my questions quickly, and we'll see how</p> <p>8 quickly we can fire through the remaining sections</p> <p>9 we have to ask about.</p> <p>10 A Okay.</p> <p>11 Q I think you mentioned that Tradewind --</p> <p>12 you described them as the big dogs, and Oklahoma was</p> <p>13 one of the key markets for you in developing wind</p> <p>14 projects; is that correct?</p> <p>15 A Yes.</p> <p>16 Q And along those lines, you had specific</p> <p>17 members of your team that would handle the</p> <p>18 development of those projects, and then you would</p> <p>19 hand off to a company like Enel Green Power North</p> <p>20 America or one of their subsidiaries to kind of take</p> <p>21 and run, I guess, once the construction began, or</p> <p>22 something along those lines; is that correct?</p> <p>23 MR. BALL: Objection to form.</p> <p>24 A That was the general construct of the</p> <p>25 relationship, yes.</p>	<p>Page 137</p> <p>1 things? Is that what you are asking?</p> <p>2 Q Yes. What is the distance around a</p> <p>3 turbine, if you are aware, that construction or</p> <p>4 excavation could not occur once the turbine was</p> <p>5 placed in the ground?</p> <p>6 A Okay. Well, bottom line is I'm not -- I</p> <p>7 don't know any specific setback requirements.</p> <p>8 Q I see.</p> <p>9 A I thought you were talking about more of a</p> <p>10 regulatory concept of required setbacks, which is a</p> <p>11 local -- kind of a local thing, but, no, I don't</p> <p>12 personally have any -- any distances in mind that I</p> <p>13 can share.</p> <p>14 Q Okay. And you also mentioned, I think in</p> <p>15 your earlier testimony, that y'all did have a lot of</p> <p>16 experience with minerals in the context of oil and</p> <p>17 gas development and that y'all had worked with</p> <p>18 landowners to ensure that oil and gas development</p> <p>19 wasn't disturbed or continued once the turbines went</p> <p>20 in; is that correct?</p> <p>21 A Yes. We were certainly looking at -- I</p> <p>22 don't think that was a permit concept per se, but we</p> <p>23 were certainly working -- working our way through</p> <p>24 and around the -- the rights of mineral interest</p> <p>25 owners in the context of oil and gas operations,</p>

<p>Page 138</p> <p>1 yes.</p> <p>2 Q Okay. So while your company might have</p> <p>3 had some experience with minerals in the form of oil</p> <p>4 and gas, did your company have experience working</p> <p>5 with mineral rights in the form of mining?</p> <p>6 A Well, that seems like kind of a loaded</p> <p>7 question, but, no, we're -- we -- we never -- we</p> <p>8 never -- that I can recall, ever came across</p> <p>9 something -- that term of, you know, mining in any</p> <p>10 context in looking at what we needed as a wind</p> <p>11 project developer.</p> <p>12 Q So you also mentioned earlier in your</p> <p>13 testimony that the Osage Wind project and the</p> <p>14 Mustang Run project, in whatever stage it got to,</p> <p>15 both in Osage County, Oklahoma, would have been</p> <p>16 Tradewind's only experience with Native American</p> <p>17 tribal issues that you're aware of, correct?</p> <p>18 A Yeah, that's all I can think of, yeah.</p> <p>19 Yeah. I mean, we've done hundreds of projects, but</p> <p>20 right off the top of my head, I can't think of any</p> <p>21 other ones.</p> <p>22 Q So you've mentioned a lot about derisking</p> <p>23 a project, and a lot of times it was the business</p> <p>24 model to develop a project or occasionally acquire</p> <p>25 it, like you did in this instance, from Wind Capital</p>	<p>Page 140</p> <p>1 Tradewind was far better at this than Enel. So in</p> <p>2 the context of this project, did you feel as</p> <p>3 confident, again considering there were unique</p> <p>4 issues that Tradewind may have not had extensive</p> <p>5 experience addressing in the past?</p> <p>6 MR. BALL: Objection to form.</p> <p>7 A I don't -- first of all, I guess I want to</p> <p>8 be clear that -- so Tradewind was the -- we were</p> <p>9 in -- we were leading the effort to do due diligence</p> <p>10 on a project that we were acquiring and would be</p> <p>11 providing information out of that process to Enel</p> <p>12 and, ultimately, making recommendations and seeing</p> <p>13 if we could get to an agreement between Tradewind</p> <p>14 and Enel on whether we would or wouldn't buy a</p> <p>15 project to go forward.</p> <p>16 That's a different situation than</p> <p>17 developing a project from scratch, where you have a</p> <p>18 much, much longer life cycle than something --</p> <p>19 typically, in something you are buying, that's</p> <p>20 already in develop -- in development, has been in</p> <p>21 development.</p> <p>22 As far as confidence level goes, there's</p> <p>23 no question, I mean, I think the record establishes</p> <p>24 this, that we were -- we were working on getting our</p> <p>25 arms around the situation with the Osage because of</p>
<p>Page 139</p> <p>1 Group, and then after you derisked it, to then sell</p> <p>2 it to Enel or another suitor, and that's kind of the</p> <p>3 general business model that y'all were operating</p> <p>4 under, correct?</p> <p>5 A Yes.</p> <p>6 Q So considering you were potentially</p> <p>7 dealing with two issues that were not standard</p> <p>8 issues for Tradewind, i.e., potential mining</p> <p>9 operations and tribal relations with the Osage Wind</p> <p>10 project, how did that influence your confidence in</p> <p>11 derisking the project?</p> <p>12 MR. BALL: Objection to form.</p> <p>13 A That's why we hired Lynn Slade is my</p> <p>14 answer, and we -- I mean, we dealt -- those two</p> <p>15 issues may have been different on this project, but</p> <p>16 we ran into things we had never seen before</p> <p>17 routinely on projects as a developer, and you</p> <p>18 would -- Tradewind would hire experts and get advice</p> <p>19 and proceed based on all of the advice we were</p> <p>20 getting from our experts, so that was Lynn Slade's</p> <p>21 role.</p> <p>22 Q (By Mr. Fields) You also mentioned that</p> <p>23 Enel was rigid on their transaction structure, that</p> <p>24 Enel preferred to allow Tradewind to perform the due</p> <p>25 diligence. So -- and you also mentioned that</p>	<p>Page 141</p> <p>1 the history of litigation and their mineral estate,</p> <p>2 if that's the proper term to use, but I can't say</p> <p>3 that I was less or more comfortable than other</p> <p>4 projects that we acquired, because -- I mean, that's</p> <p>5 kind of a qualitative relative thing, but we -- we</p> <p>6 had issues on all projects. There were always</p> <p>7 issues and things that you just had to kind of work</p> <p>8 your way through, and I don't -- I don't know that I</p> <p>9 would necessarily think of this one that</p> <p>10 differently.</p> <p>11 Q Can you recall any other project that you</p> <p>12 worked on with -- at Tradewind where a federal</p> <p>13 agency issued a stop work order that y'all had to</p> <p>14 deal with?</p> <p>15 MR. BALL: Object to the form.</p> <p>16 A Sorry, you broke up. Issued a what?</p> <p>17 Q (By Mr. Fields) Issued a stop work order</p> <p>18 where the project had to be halted to comply with</p> <p>19 the federal demand?</p> <p>20 MR. BALL: Objection to form, assumes</p> <p>21 facts not in evidence.</p> <p>22 A Well, I'm not even -- I guess I'm not</p> <p>23 aware --</p> <p>24 Q (By Mr. Fields) You can answer.</p> <p>25 A Actually I'm not aware that that was done,</p>

<p>Page 142</p> <p>1 so I don't --</p> <p>2 Q So you are not aware that -- you are not</p> <p>3 aware that on October 9th, 2014, the BIA issued a</p> <p>4 formal letter requesting or demanding that the Osage</p> <p>5 Wind project cease and desist operations?</p> <p>6 A We had sold the project, right, in</p> <p>7 September of 2014.</p> <p>8 Q Are you asking me or telling me?</p> <p>9 A Well, that's my memory of the date that we</p> <p>10 all just looked at on the document, and, no, we were</p> <p>11 not involved in construction, and we were not</p> <p>12 consulting in any way with Enel in the construction</p> <p>13 phase. And so at some point -- at some point I was</p> <p>14 aware that there were -- there was a lawsuit filed,</p> <p>15 but, no, I don't -- I don't recall necessary -- I</p> <p>16 don't recall being informed or somebody telling me</p> <p>17 that there was some kind of an order like that. I</p> <p>18 don't know anything about that. I just know that I</p> <p>19 became aware at some point that there was</p> <p>20 litigation.</p> <p>21 Q Yes, sir. So earlier when the OMC was</p> <p>22 showing you a set of emails, do you recall the email</p> <p>23 in around October of 2013 where you asked Mr. Slade,</p> <p>24 what would trigger BIA involvement?</p> <p>25 A I don't --</p>	<p>Page 144</p> <p>1 A No, not to my knowledge.</p> <p>2 Q Okay.</p> <p>3 A We weren't a construction company, that's</p> <p>4 right.</p> <p>5 Q Yes, sir. And the date of the membership</p> <p>6 interest purchase agreement where Tradewind sold its</p> <p>7 interest in the project to Enel Kansas was</p> <p>8 September 17th, 2014, correct?</p> <p>9 A That's the date that I'm remembering,</p> <p>10 yeah, that we all just looked at.</p> <p>11 Q So -- so based on Tradewind not having any</p> <p>12 role in the construction of the Osage Wind project</p> <p>13 and the fact that the assets weren't sold to Enel</p> <p>14 Kansas until September 17th, 2014, who would have</p> <p>15 been involved in monitoring, managing the</p> <p>16 construction of the project before that transaction</p> <p>17 sale date?</p> <p>18 A Before September 17th?</p> <p>19 Q Yes, sir.</p> <p>20 A Involving construction?</p> <p>21 Q Yes, sir.</p> <p>22 A I don't -- I'm not aware that there</p> <p>23 were -- there were construction activities on site.</p> <p>24 If there were, I'm not aware of it prior to that</p> <p>25 date, and if there were, it would not have been</p>
<p>Page 143</p> <p>1 Q (Inaudible)</p> <p>2 A I don't remember that email string. That</p> <p>3 was --</p> <p>4 Q Okay.</p> <p>5 A -- a long time ago other than what I just</p> <p>6 read that you showed me.</p> <p>7 Q Yes, sir. Then fast forwarding a year</p> <p>8 later, from October '13 to October of 2014, it seems</p> <p>9 like your concerns came true, and the activities did</p> <p>10 trigger a BIA response in the form of a cease and</p> <p>11 desist letter. So it's your testimony that you</p> <p>12 weren't aware of that letter coming in on</p> <p>13 October 9th, 2014?</p> <p>14 MR. BALL: Objection to form.</p> <p>15 A I don't -- I don't remember -- I don't</p> <p>16 remember, no, I don't remember that. That's all I</p> <p>17 can tell you.</p> <p>18 Q (By Mr. Fields) Okay.</p> <p>19 MR. FIELDS: Michelle, could you pull up</p> <p>20 what's previously been entered as Exhibit 60.</p> <p>21 (Exhibit 60 marked for identification.)</p> <p>22 Q (By Mr. Fields) So, Mr. Freeman, you've</p> <p>23 said a couple of times pretty emphatically that</p> <p>24 Tradewind had nothing to do with the construction of</p> <p>25 the Osage Wind project, correct?</p>	<p>Page 145</p> <p>1 Tradewind making the call or -- we wouldn't --</p> <p>2 Tradewind -- there's no one at Tradewind, even if</p> <p>3 they were -- even if there were something going on</p> <p>4 site -- and by the way, we haven't, I guess, defined</p> <p>5 construction, so I'm not sure what activity you</p> <p>6 would be referencing, but there's -- for sure</p> <p>7 there's nothing that Tradewind would have been</p> <p>8 done -- doing on site that you might call</p> <p>9 construction that would not be under the direction</p> <p>10 of Enel.</p> <p>11 Q Okay. So what do you define construction</p> <p>12 as then?</p> <p>13 A Well, the -- I mean, I guess it's just</p> <p>14 when you start moving dirt, quote, unquote, would be</p> <p>15 what most people would think. That's probably what</p> <p>16 I would call it.</p> <p>17 Q Okay.</p> <p>18 A We, typically, would not -- we would,</p> <p>19 typically, not move dirt or start, you know, those</p> <p>20 kinds activities of on a project as Tradewind.</p> <p>21 Q Yes, sir. You mentioned that Enel would</p> <p>22 have been the entity that would have been in charge</p> <p>23 of construction activities before September 17th,</p> <p>24 2014, on this project because Tradewind didn't have</p> <p>25 that expertise, correct?</p>

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1 A Well, that's right. I'm struggling with
2 your question, because you're suggesting that I know
3 there was construction on the site before
4 September 17th, and I don't know that.
5 **Q That's correct, sir. I'm just trying --**
6 **you've mentioned a couple of times throughout your**
7 **testimony that -- things like the buck stops with**
8 **me, I'm the CEO, and I'm not trying to impugn your**
9 **memory going back, like you've said, some nine years**
10 **or what have you, but it's just critically**
11 **important, I think, to this case to understand what**
12 **you or Tradewind knew when you knew it and when --**
13 **and what the defendants were doing. So along those**
14 **lines, let me look at an exhibit that, hopefully,**
15 **will help continue what we're discussing.**
16 A Okay, fine. Not construction.
17 **Q Right.**
18 A So when you say that I said the buck stops
19 with me, I was speaking strictly about Tradewind
20 development activities. There was no construction
21 anything that ever came to me.
22 **Q Okay. So what you are looking at here is**
23 **a filing in this case.**
24 MR. FIELDS: If you scroll to the top,
25 Michelle, to the very top.

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1 **Q (By Mr. Fields) This is document 17-1**
2 **that was filed on December 10th, 2014. This has**
3 **previously been entered as Exhibit 60. It's the**
4 **declaration of Bill Moskaluk.**
5 MR. FIELDS: Can you scroll down,
6 Michelle, just so they can see that this is -- and
7 it was in the context of defense -- go back up.
8 **Q (By Mr. Fields) It was in the context of**
9 **a filing where defendants were responding to**
10 **plaintiff's motion for preliminary injunction in the**
11 **underlying litigation. So Mr. Moskaluk's**
12 **declaration was Exhibit 1.**
13 MR. FIELDS: So scroll down, please, and
14 let them see the Bates stamp --
15 **Q (By Mr. Fields) Oh, I guess it's not**
16 **Bates stamped, because this was a filed document,**
17 **and this was Exhibit 60 that's previously been**
18 **entered in this testimony of other deponents. So**
19 **you'll see this is the declaration of Bill Moskaluk.**
20 MR. FIELDS: Make it as big as you can.
21 Yeah, make it nice and big. Back to where you were
22 is good. Perfect. Scroll down to paragraph 12,
23 please.
24 **Q (By Mr. Fields) Mr. Freeman, if at any**
25 **point in time you can't read what's on the screen,**

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1 **please tell us. I want to make sure it's easy**
2 **enough to read and blown up to make it clear; okay?**
3 MR. FIELDS: Perfect. A little bit more.
4 There you go. Okay.
5 **Q (By Mr. Fields) So this is Mr. Moskaluk,**
6 **and in paragraph 12, I'm just going to leave that**
7 **portion there. Can you see the beginning of it**
8 **where it says, "Construction of the project has been**
9 **proceeding on the schedule developed in 2013"?**
10 A Yes.
11 **Q Perfect. Do you mind reading through that**
12 **to yourself, and then once you've had a chance to**
13 **kind of surmise what it's about, we can ask some**
14 **questions.**
15 MR. MAY: Can you please scroll up to the
16 top of that so the witness can get some context on
17 who this person is?
18 A I don't know this name, Bill whoever. I
19 don't know that name.
20 **Q (By Mr. Fields) Okay. We can go back to**
21 **the very beginning, the first paragraph, so you can**
22 **see who Mr. Moskaluk is.**
23 MR. FIELDS: Scroll back up, Michelle, if
24 you don't mind.
25 **Q (By Mr. Fields) I think the first couple**

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1 **of paragraphs will give you some context.**
2 A Okay.
3 **Q All right.**
4 MR. FIELDS: Does counsel want to see any
5 additional context?
6 MR. MAY: Yes, just scroll down through
7 there, a little more scrolling just so I can see.
8 MR. FIELDS: I guess give them paragraphs
9 3 and 4.
10 MR. MAY: Keep going, please.
11 MR. FIELDS: Okay. Next page?
12 All right. Perfect. Thank you, Michelle.
13 MR. MAY: Yeah. Keep scrolling, please.
14 Okay. (Inaudible.)
15 MR. FIELDS: That's perfect, paragraph 11.
16 **Q (By Mr. Fields) All right. Would you**
17 **like to see any additional context before I get into**
18 **my questions, or are you okay, so far, Mr. Freeman?**
19 A Yeah, I think I'm okay.
20 **Q Okay. So do you see the first line on**
21 **paragraph 11 that says, "Construction of the Osage**
22 **Wind project commenced on October 25th, 2013"?**
23 A Yes.
24 **Q And so for context, that's approximately**
25 **two months after Tradewind purchased the project**

<p>Page 150</p> <p>1 from Wind Capital Group, because that transaction</p> <p>2 was executed August 22nd, 2013. So if Tradewind</p> <p>3 wasn't in charge of the construction for -- starting</p> <p>4 October 25th, 2013, who was?</p> <p>5 A Well, it looks like -- first of all, I</p> <p>6 didn't remember the roads had been -- initial road</p> <p>7 construction had happened. I'm having a hard time</p> <p>8 -- let's see, I guess it looks like that's -- that's</p> <p>9 about commensurate when we bought the project</p> <p>10 from -- Tradewind bought the project from Wind</p> <p>11 Capital Group. So anyway, yeah, so I -- I didn't</p> <p>12 remember that there was road -- road-related work</p> <p>13 going on, and the answer to your question is who</p> <p>14 would have -- who would have managed that or been</p> <p>15 responsible, I don't know. I would tell you to</p> <p>16 ask -- ask the Enel guys and ask Matt Gilhousen.</p> <p>17 Q Okay. So when you define construction as</p> <p>18 moving dirt, wouldn't you say that this meets your</p> <p>19 construction -- meets your definition of</p> <p>20 construction if they were, in fact, moving dirt to</p> <p>21 build roads and other site preparation work, as</p> <p>22 noted in these two paragraphs that you can see here?</p> <p>23 A Generally, yeah, and we -- we typically</p> <p>24 did not do this kind of stuff, so I just don't know</p> <p>25 -- yeah, again, I don't know who was leading that</p>	<p>Page 152</p> <p>1 chance to look through it. Can you see to the end</p> <p>2 of the paragraph which looks to end on Thanksgiving</p> <p>3 weekend? I just want to make sure that's available</p> <p>4 for to you view on your screen, Mr. Freeman.</p> <p>5 A Yeah, I can see it.</p> <p>6 Q Okay. Perfect.</p> <p>7 MR. FIELDS: So, Michelle, could you kind</p> <p>8 of highlight the sentence that says, "Excavation</p> <p>9 work for foundations began on September 10th, 2014,"</p> <p>10 right in the middle?</p> <p>11 A I see that.</p> <p>12 Q (By Mr. Fields) Okay. So I just wanted</p> <p>13 to be -- to be clear. Based on this information</p> <p>14 from a boots on the ground individual working for</p> <p>15 Enel Green Power North America, Mr. Moskaluk, beyond</p> <p>16 road work and site preparation, he's stating that</p> <p>17 excavation work for the foundations began on</p> <p>18 September 10th, 2014. So would you say that that</p> <p>19 also fits your definition of what construction would</p> <p>20 entail?</p> <p>21 A Yeah, I would think so, yeah. I don't</p> <p>22 have any --</p> <p>23 Q And --</p> <p>24 A I don't have any specific knowledge of</p> <p>25 that myself.</p>
<p>Page 151</p> <p>1 and who was involved. I would -- I mean, out of the</p> <p>2 hundreds of projects that Tradewind developed, this</p> <p>3 might be the only one that we -- there was actually</p> <p>4 road construction going on on a project before we</p> <p>5 sold it. I had remembered that that happened on one</p> <p>6 project, but I didn't remember that this was it.</p> <p>7 So, apparently, this was it. I was actually</p> <p>8 thinking it might have been Mustang Run, but,</p> <p>9 anyway, yeah. So you'll have to -- you'll have to</p> <p>10 ask them.</p> <p>11 Q Yes, sir. So it looks like -- if you look</p> <p>12 at the second sentence of paragraph 12, it says,</p> <p>13 "That work continued through roughly the end of</p> <p>14 January 2014. From roughly late March through</p> <p>15 June 2014 further road construction and site</p> <p>16 preparation work was ongoing at the project." Do</p> <p>17 you -- in your opinion what is site preparation work</p> <p>18 as it would be separate from road construction?</p> <p>19 A Yeah, I have no idea.</p> <p>20 MR. FIELDS: Scroll down, Michelle,</p> <p>21 please.</p> <p>22 Q (By Mr. Fields) I just want to show you</p> <p>23 the rest of the paragraph.</p> <p>24 MR. FIELDS: Keep on going.</p> <p>25 Q (By Mr. Fields) So I want to give you a</p>	<p>Page 153</p> <p>1 Q But in addition to -- I'm trying to put</p> <p>2 this Osage Wind project in context to understand,</p> <p>3 since you said you worked on so many projects, all</p> <p>4 the different ways this project may have been unique</p> <p>5 or stood out as being unusual compared to some of</p> <p>6 the rest. At this point we've identified the fact</p> <p>7 that it involved a tribal nation, it had</p> <p>8 construction work that was starting before y'all had</p> <p>9 sold the assets, and it also involved a federal</p> <p>10 cease and desist order from an agency that happened</p> <p>11 about a month after the date of these foundations</p> <p>12 excavation work beginning.</p> <p>13 So can you think of any other unusual</p> <p>14 aspects to this project that would have made it</p> <p>15 separate and apart from the standard wind</p> <p>16 development project that Tradewind was used to</p> <p>17 doing?</p> <p>18 MR. BALL: Objection to form, assumes</p> <p>19 facts not in evidence.</p> <p>20 A It was not terribly unusual for the</p> <p>21 legal -- the legal process between Enel and</p> <p>22 Tradewind, as partners to lag -- to lag things that</p> <p>23 were going on with a project. So that's not -- I</p> <p>24 honestly can't say if it's -- if that's happened</p> <p>25 other times where there was actually construction</p>

<p>Page 154</p> <p>1 going on on site before the paper -- you know, the 2 papers were signed, but I do know for sure that 3 there were many, many times over the course of a 4 13-year partnership that the lawyers in a 5 transaction process would be lagging whatever it was 6 that we were working on. 7 So that actually doesn't -- that actually 8 doesn't shock me, and, in any event, regardless of 9 the date on the -- on the purchase and sale 10 agreement, I'm confident in saying that Enel would 11 have been -- Enel would have been managing any kind 12 of -- any kind of construction process, certainly 13 excavation work that's mentioned here. 14 And again, you mentioned the -- you 15 mentioned whatever the order was that came from the 16 U.S., that came after -- after the transaction had 17 closed, you know, all the above had occurred. I'm 18 not going to sit here and tell you that there's no 19 one on my team that knew more specifically what had 20 happened in October. I'm saying, I personally was 21 not -- I just don't remember. 22 Yeah, in fact, my -- my sense of how 23 things went after the acquisition by Enel was that 24 any information we were getting on the project was 25 just sort of dribbling in as almost hearsay. So was</p>	<p>Page 156</p> <p>1 is that there's a plaintiff out there who decided to 2 file a lawsuit. I mean, we wouldn't -- we were not 3 in the business of taking risks that would result in 4 litigation. 5 Q (By Mr. Fields) At this point, I mean, 6 are you aware that the Tenth Circuit has ruled that 7 the work that was done here was illegal mining that 8 required a federal permit, and so that's kind of the 9 juxta of why we're here taking these depositions in 10 discovery, is that we're trying to figure out how 11 the Osage Nation can be compensated for what 12 happened? Are you aware that the Tenth Circuit had 13 issued that ruling and defined these activities as 14 mining? 15 MR. BALL: Objection to form. 16 A Yes, I -- obviously, I'm not involved in 17 litigation, and the only thing that I know is 18 basically what you just said, which came to me from 19 the attorneys that are involved. 20 Q (By Mr. Fields) So is it fair to say that 21 this is more than just a plaintiff filing a lawsuit, 22 now that the Tenth Circuit has made this ruling? I 23 mean, considering you are also having to be deposed 24 for it, I would say that you are part of this 25 litigation, at least as a witness. Isn't that fair</p>
<p>Page 155</p> <p>1 this -- you are talking about whether this project 2 was unusual. You know, we -- you need to appreciate 3 that we deal with -- in the development business, we 4 deal with lots of binary issues that if they go the 5 wrong way on you, you know, they can -- they can be 6 pretty challenging. And so we're -- we're 7 accustomed to lots of curves on projects and dealing 8 with lots of binary issues on projects. 9 So I think you are asking me really if I 10 would characterize this project as unique, and I 11 guess I wouldn't say that. I would not characterize 12 it as unique in that sense. 13 Q Well, you testified earlier that you've 14 never sat for a deposition before, correct? 15 A Correct. 16 Q So would you characterize it as unusual 17 that you are sitting for a deposition now on a 18 project you developed that had these unusual 19 characteristics, but somehow the fact that we're in 20 litigation and you are here now, this doesn't kind 21 of confirm that this was an unusual situation for 22 Tradewind and you? 23 MR. BALL: Objection to form, assumes 24 facts not in evidence. 25 A Yeah, sorry. I mean, all that says to me</p>	<p>Page 157</p> <p>1 to say? 2 MR. BALL: Objection to form. 3 MR. MAY: You are saying he (inaudible). 4 What kind of question is that? 5 THE REPORTER: Mr. May, I cannot hear you 6 at all. 7 MR. MAY: This is Kirk May, M-A-Y. The 8 only reason he's "part of this litigation," which 9 he's not a party, is because you subpoenaed him. So 10 what? 11 MR. FIELDS: I'm not going to get into -- 12 MR. MAY: It's irrelevant. I object. 13 Move on. Move on. It has -- it's irrelevant. 14 MR. FIELDS: So are you instructing your 15 witness not to answer, or are you making a form 16 objection, which is the only type of objection 17 that's allowed? 18 MR. MAY: I'm making a form objection. 19 The question is ridiculous, and it's not within the 20 scope of discovery. 21 MR. FIELDS: Okay. 22 MR. MAY: It assumes he had something to 23 do with being involved in the litigation, which he 24 didn't. 25 You can answer.</p>

<p>Page 158</p> <p>1 MR. FIELDS: Do you mind turning the</p> <p>2 camera back to the deponent.</p> <p>3 Q (By Mr. Fields) So Mr. Freeman --</p> <p>4 A Yeah, what's your question?</p> <p>5 Q My question is, is it your understanding</p> <p>6 that your responsibilities regarding the Osage Wind</p> <p>7 project ended on September 18th, 2014, when the sale</p> <p>8 was completed?</p> <p>9 MR. BALL: Objection to form.</p> <p>10 A I don't -- no, I can't say that, because</p> <p>11 again -- well, I've already said that it was not</p> <p>12 unusual for Tradewind to have continuing</p> <p>13 responsibility for specifically just development</p> <p>14 related stuff. I gave you an example of talking to</p> <p>15 the landowner where the cows got out, and I think as</p> <p>16 we were circling through the documents earlier, I</p> <p>17 think I saw that there was a development agreement</p> <p>18 that may have covered some of those kind of things.</p> <p>19 So, no, I can't say that we had zero involvement.</p> <p>20 What I'm saying is that we are -- we were not</p> <p>21 responsible for construction of the project.</p> <p>22 And as far as how I would characterize</p> <p>23 your question about my reaction to the litigation,</p> <p>24 my reaction to the litigation is, I'm really</p> <p>25 surprised that this happened and that this got this</p>	<p>Page 160</p> <p>1 efforts that Tradewind made to confirm whether or</p> <p>2 not the legal analysis was thoroughly vetted by</p> <p>3 outside counsel, Modrall Sperling?</p> <p>4 MR. BALL: Objection to form.</p> <p>5 A I would say that the Tradewind team felt</p> <p>6 comfortable that it was fully vetted.</p> <p>7 Q (By Mr. Fields) And what gave you that</p> <p>8 level of comfort?</p> <p>9 A I had a lot of confidence in the team and</p> <p>10 the process and the advisers. That's the answer.</p> <p>11 Q You mentioned earlier that some</p> <p>12 information about the project was dribbling in as</p> <p>13 hearsay. What did you mean by that?</p> <p>14 A I didn't have any -- I don't even know</p> <p>15 what would constitute official, but I was not</p> <p>16 contacted by any attorneys or board members or that</p> <p>17 kind of thing, to have specific discussions with me</p> <p>18 about what was going on with the project after we</p> <p>19 sold it, but I became aware at one point --</p> <p>20 Q You mentioned --</p> <p>21 A -- that it was in litigation, that</p> <p>22 somebody around Tradewind, probably -- probably Matt</p> <p>23 Gilhousen, or it could have been in a conversation,</p> <p>24 like I was having with Mike Storch, or -- so I don't</p> <p>25 know, but at some point I became aware of it. I</p>
<p>Page 159</p> <p>1 far, and I'm very surprised at the decision of a</p> <p>2 court, because I've made it clear that we were</p> <p>3 advised by counsel who we thought were some of the</p> <p>4 foremost authorities in the country on these things,</p> <p>5 looking at it, that we -- that there was nothing</p> <p>6 needed. So I'm surprised.</p> <p>7 Q (By Mr. Fields) Based on your experience</p> <p>8 being focused on derisking projects and being in the</p> <p>9 business of many times handing them over to Enel or</p> <p>10 one of their subsidiaries to purchase, what efforts</p> <p>11 did you make or Tradewind make to push back on</p> <p>12 Modrall Sperling's legal analysis to ensure that it</p> <p>13 was accurate?</p> <p>14 MR. BALL: Objection to form.</p> <p>15 A What efforts did we make to push back on</p> <p>16 Lynn Slade's analysis? I don't remember the details</p> <p>17 of the conversation. I can tell you that we were a</p> <p>18 very detail oriented shop. We had a reputation</p> <p>19 nationally as being one of the top development shops</p> <p>20 in the country, and we had some extremely anal</p> <p>21 retentive people, including Matt Gilhousen, on</p> <p>22 development, making sure that all the boxes were</p> <p>23 checked on projects. That was the character of our</p> <p>24 organization as relates to this dispute.</p> <p>25 Q (By Mr. Fields) So are you aware of the</p>	<p>Page 161</p> <p>1 don't know who told me, but we were -- we were</p> <p>2 not -- we were not sort of brought in or, you know,</p> <p>3 consulted with. I use that term in a non-technical</p> <p>4 sense, on whatever was going on at the time after we</p> <p>5 sold it.</p> <p>6 Q Earlier in your testimony I got a little</p> <p>7 confused when you were kind of giving some context</p> <p>8 to Ms. Baker's questions about Tradewind's</p> <p>9 partnership with Enel and then Tradewind's</p> <p>10 acquisition by Enel and kind of the timeline of how</p> <p>11 those events happened. So approximately when did</p> <p>12 you leave Tradewind, just to kind of refresh my</p> <p>13 memory?</p> <p>14 A Me personally?</p> <p>15 Q Yeah, I think you said you went to Savion,</p> <p>16 but when did that happen?</p> <p>17 A Yeah. March of 2019. There was -- there</p> <p>18 was a sales transaction that involved multiple</p> <p>19 parties, and Enel -- Enel bought Tradewind, but at</p> <p>20 the same time, on the same day, about two-thirds of</p> <p>21 the assets of the company were sold to other</p> <p>22 companies, one of which was Savion. So Savion</p> <p>23 bought solar assets and Vinergy in Chicago bought</p> <p>24 wind assets, and those things closed, and then,</p> <p>25 essentially, commensurate with those deals closing</p>

<p>Page 162</p> <p>1 and all those assets being sold off, Enel bought 2 what was left of Tradewind Energy, Inc. 3 Q So since you didn't go with some of those 4 assets to Enel, are you aware of any other members 5 of your team that at the time went with the assets 6 to Enel? 7 A Yes. So at the closing, again, we had 8 about 145 employees, and roughly 53 or 55 moved with 9 Savion, and I was in that group. Then all of the 10 remaining employees, so 145 give or take minus 53, 11 give or take, stayed with Tradewind. 12 Q Okay. And are you aware -- some of the 13 members of your team that were -- that you called 14 out earlier in the deposition, like Ms. Dean, are 15 you aware of where she went? 16 A Yeah, she went with Tradewind. 17 Q Okay. Tradewind and then Enel? 18 A Yeah, and Matt Gilhousen did as well. 19 Q How about Mr. Coventry? 20 A Geoff Coventry went with me over to Savion 21 and that group. To be clear -- 22 Q So you mentioned -- 23 A -- on the closing of that transaction, all 24 the equity that Rob, Matt -- Rob Freeman, Matt 25 Gilhousen and Geoff Coventry owned was all sold,</p>	<p>Page 164</p> <p>1 A Correct. 2 Q And so beyond Mr. Willman and Mr. Slade at 3 Modrall Sperling, can you recall any other outside 4 counsel that was involved on this project, Osage 5 Wind project, and how their analysis fit in with 6 this project's ability to go forward? 7 A I can't name any other lawyers or firms 8 for sure. Yeah, I just don't -- Enel frequently 9 used Stoel Rives. I don't remember if they were 10 involved or not on the Enel side. 11 Q So in your recollection of how outside 12 counsel was brought in on the Osage Wind project, 13 once the realization was made that there was a lack 14 of tribal relations -- or tribal experience related 15 to the Osage Wind project, whose idea was it to seek 16 additional outside counsel assistance? 17 MR. BALL: Objection to form. 18 A I don't remember exactly how that decision 19 was made or how we found Lynn. Yeah, I just 20 don't -- I don't recall. 21 Q (By Mr. Fields) If you had to hazard a 22 guess, do you think it could have been Mr. Willman? 23 MR. BALL: Objection to form. 24 A Yes, if I was hazarding a guess, yes, that 25 would be my guess, yes. Steve and I probably were</p>
<p>Page 163</p> <p>1 100 percent, so we had no remaining stake in the 2 company, and we owned -- at that time the three of 3 us owned about 81 percent of the business, and we 4 sold that 81 percent to Enel. 5 Q You mentioned earlier in your testimony 6 that you personally provided close oversight of 7 outside counsel, and you were, I think, explaining 8 that in the context of not having an in-house 9 counsel at Tradewind in 2013 and '14 and that you 10 had used Mr. Willman, I think, as your general 11 counsel, but in an outside counsel relationship; is 12 that correct? 13 A Yeah. 14 Q And I know you mentioned that you are a 15 practicing attorney, I think you said in Missouri 16 and Arkansas, but, typically, when you were -- 17 A Licensed. Licensed. 18 Q Licensed. 19 A Not practicing law. 20 Q Okay. That's what I meant, so I 21 appreciate that. While you were a licensed 22 attorney, you weren't -- you were -- while you may 23 have been reviewing documents of a legal nature, you 24 were doing that in the context of your role as CEO, 25 correct?</p>	<p>Page 165</p> <p>1 talking, and, you know, Steve probably saying that 2 he -- you know, telling me that he didn't have any 3 particular experience in that kind of thing and that 4 we should bring in an expert. 5 Q (By Mr. Fields) And so after Tradewind 6 purchased the assets from Wind Capital Group in 7 August of 2013, fast forward about two or three 8 months to October of 2013 when both Wind Capital and 9 Tradewind, through each of their CEOs, yourself 10 being one of them, receive a letter from the Osage 11 Minerals Council warning about potential regulatory 12 violations that would require the need for a mining 13 permit. Do you recall receiving that letter in 14 October of 2013 from the OMC? 15 A I do not. 16 Q So if at that point the decision had been 17 made to go to outside counsel with additional tribal 18 experience, would it have been possible that Enel 19 Green Power North America would have assisted 20 Mr. Willman in tracking down Modrall as the firm 21 that was going to kind of lead those efforts for 22 you? 23 A Yeah, I just don't -- I just don't 24 remember how we -- how we found Lynn Slade. 25 Q Okay. But when you say "we," do you mean</p>

<p>Page 166</p> <p>1 we as in Tradewind, or do you mean we as in 2 Tradewind and some of the other interested parties 3 that had an interest in the Osage Wind project? 4 A Well, Tradewind. I'm speaking for 5 Tradewind. At some point I'm sure that -- in fact, 6 I feel confident in saying that at some point there 7 were Enel people on the phone with our experts and 8 the Tradewind team, probably like I've mentioned 9 that they had -- you know, they had their own Jennie 10 Dean counterpart and that kind of thing, but 11 you're -- to be clear, I think you are asking me how 12 the decision was made to hire Lynn Slade, and I 13 don't -- I don't recall who was involved in that. 14 Q But you are saying after the decision was 15 made to hire him that both employees of Tradewind 16 and employees of Enel Green Power North America were 17 involved with discussions, including Mr. Willman and 18 Mr. Slade, in the legal analysis to get Tradewind 19 and EGPNA comfortable with the fact that y'all did 20 not need a permit -- a mining permit for this job, 21 correct? 22 A I believe so. 23 Q In one of your comments earlier in your 24 deposition, you said that -- when asked some 25 questions about how the single project LLCs were</p>	<p>Page 168</p> <p>1 owned -- yeah, at that point would it have surprised 2 you if Mr. Willman would have been acting on Enel 3 Green Power North America's behest for aspects 4 related to the project? 5 MR. BALL: Objection to form. 6 A I would just say what I -- just repeat 7 what I just said, which is it would have required -- 8 if he was giving legal advice to Enel, I mean, it 9 probably -- I would think he would have had a 10 conflict waiver, and it would have been something 11 that we considered to be -- everybody's interests 12 were aligned and not a big deal. So would it shock 13 me, no. I don't recall specifically that that 14 happened on that project. 15 Q (By Mr. Fields) But it's fair to say, as 16 you just mentioned, that as long as the interests of 17 Tradewind and Enel Kansas or Enel Green Power North 18 America were aligned, I mean, is it fair to say all 19 those entities would be kind of working together to 20 get a common goal accomplished, which is get this 21 project from development to completion? 22 MR. BALL: Objection to form. 23 A Yes, I mean, we were partners. They 24 were -- they were lenders to the project, so once we 25 bought the project, we were getting -- we were</p>
<p>Page 167</p> <p>1 used in different transactions, that was kind of 2 like a course and practice of the business or 3 industry, especially the transactions between 4 Tradewind and Enel, you mentioned that Mr. Willman 5 never represented Enel, and he wouldn't because it 6 would have been -- he would have been conflicted. 7 What did you mean by that? 8 A Well, Steve represented Tradewind, and I 9 guess let me -- let me clarify that statement. On 10 anything that Tradewind was -- that Steve was 11 representing Tradewind on, Steve would not have been 12 representing Enel. I mean, just as a general 13 statement, he was not Enel's lawyer, he was 14 Tradewind's lawyer. I can't say that there was 15 never a time over 13 years that he didn't have us 16 sign a conflict waiver to do something for Enel that 17 both sides would be comfortable with. That may have 18 happened, but, yeah, generally, he was Tradewind's 19 lawyer, and if there was any real conflict; that is, 20 interests not aligned, something material, Steve 21 would not have been representing both sides at the 22 same time. 23 Q So before the transaction was completed on 24 September 17th, 2014, where the Osage Wind assets 25 were sold from Tradewind to Enel Kansas, a wholly</p>	<p>Page 169</p> <p>1 getting very pregnant, so, yeah, certainly 2 everybody -- everybody would have been rowing in the 3 same direction to get the project done. I mean, 4 that's kind of a no brainer, I think. 5 Q (By Mr. Fields) I don't mean to belabor 6 the point, but just to understand where you are 7 coming from, when you say "at that point in time we 8 were very pregnant," what do you mean by that? I'm 9 just trying to figure out in what context you are 10 applying that. 11 A There was a lot of money that was being 12 spent on the project, and, apparently, at some point 13 there roads and a laydown yard being set up. So, 14 yeah -- I said this earlier, but you don't -- you 15 don't start spending a lot of money on a project 16 unless you are -- you've done your homework and 17 you're comfortable that everything is buttoned up, 18 and as the acquirer of the project and the lender to 19 the project, Enel would have exactly the same 20 interest, obviously, making sure that everything is 21 buttoned up. 22 Q Are you aware there were upwards of, I 23 don't know, four to six different versions of the 24 detailed legal analysis that Modrall Sperling 25 provided in the one year from October of 2013 to</p>

<p>Page 170</p> <p>1 October of 2014?</p> <p>2 A No.</p> <p>3 Q So you also wouldn't be aware of the</p> <p>4 motivations for adjusting those various memoranda as</p> <p>5 they changed throughout that year from October 2013</p> <p>6 to October 2014?</p> <p>7 A I don't recall -- I don't recall specific</p> <p>8 iterations. I'm confident that the bottom line that</p> <p>9 we were focused on never changed.</p> <p>10 Q And that was?</p> <p>11 A That we didn't need a permit.</p> <p>12 (Exhibit 183 marked for identification.)</p> <p>13 MR. FIELDS: Michelle, could you pull up</p> <p>14 what's been previously marked as Exhibit 183.</p> <p>15 Q (By Mr. Fields) This is Osage Wind</p> <p>16 Priv-000697. It's an email from August 19th, 2014.</p> <p>17 Is that big enough where you can see, kind of read</p> <p>18 what it says, or does Michelle need to blow it up a</p> <p>19 little bit for you?</p> <p>20 A No, I can see it.</p> <p>21 Q Okay. I'll give you a second to look at</p> <p>22 that, and I'll ask you some follow-up questions.</p> <p>23 A I've read the opening sentence here, yeah.</p> <p>24 Q Okay.</p> <p>25 MR. FIELDS: Michelle, you can scroll down</p>	<p>Page 172</p> <p>1 outside general counsel to adjust a memo with your</p> <p>2 outside counsel that you've hired specifically for</p> <p>3 the Osage Wind project in Modrall Sperling, does it</p> <p>4 surprise you that no one from Tradewind was copied</p> <p>5 on this?</p> <p>6 A Not necessarily. I mean, you would have</p> <p>7 to ask Mr. Willman what his relationship was with</p> <p>8 EGP. I don't recall -- again, I don't recall</p> <p>9 whether or not he was -- he was actually -- he was</p> <p>10 actually advising them and representing them</p> <p>11 pursuant to a conflict waiver or if somebody just</p> <p>12 called up Steve and said, hey -- it was involved in</p> <p>13 this whole due diligence process and said, hey, we</p> <p>14 need some -- you know, we need some change or tweak</p> <p>15 or whatever it was to a memo. So I don't know.</p> <p>16 You'll have to ask Steve.</p> <p>17 MR. FIELDS: You can take that down,</p> <p>18 Michelle.</p> <p>19 Q (By Mr. Fields) So you are not aware of</p> <p>20 any reason the month before you are trying to</p> <p>21 finally market and sell the assets of the Osage Wind</p> <p>22 project to Enel Kansas why adjustments to that memo</p> <p>23 would have been needed at that point in time?</p> <p>24 A No. I don't recall anything about that.</p> <p>25 I guess with this sort of tone of questioning, I</p>
<p>Page 171</p> <p>1 to show him that there's nothing else of context</p> <p>2 other than disclaimers at the bottom. Okay. So</p> <p>3 scroll back up for him.</p> <p>4 Q (By Mr. Fields) I'm just trying to put</p> <p>5 this email in context to what you have been telling</p> <p>6 us over the last few minutes about Mr. Willman's</p> <p>7 representation of Tradewind, and, potentially, I</p> <p>8 guess, his arguable work for Enel Green Power North</p> <p>9 America. So this is dated, this email, August 19th,</p> <p>10 2014, and it's from Mr. Willman to Mr. Slade. This</p> <p>11 is approximately a month before Tradewind has sold</p> <p>12 its assets to Enel Kansas.</p> <p>13 A Okay.</p> <p>14 Q And so Mr. Willman is asking Mr. Slade to</p> <p>15 get on a phone call the following day about the</p> <p>16 Osage Mineral memo, as EGP has asked to have it</p> <p>17 scaled back without conclusions. So were you aware</p> <p>18 that Enel Green Power had asked Mr. Willman to ask</p> <p>19 Mr. Slade to scale back his legal memo to remove the</p> <p>20 conclusions?</p> <p>21 MR. BALL: Objection to form.</p> <p>22 A Yeah, no, I mean, this doesn't -- it</p> <p>23 doesn't ring any bells with me, no.</p> <p>24 Q (By Mr. Fields) So because it looks like</p> <p>25 Enel Green Power was specifically asking your</p>	<p>Page 173</p> <p>1 feel -- I feel compelled to emphasize again that we</p> <p>2 all felt comfortable that the project was on solid</p> <p>3 legal standing or ground and proceeding the way we</p> <p>4 were proceeding with the advice of Lynn Slade,</p> <p>5 nothing nefarious going on. Nobody was betting the</p> <p>6 house on one single project in Oklahoma. There was</p> <p>7 no reason to do that: I couldn't feed my family</p> <p>8 very well that way, so --</p> <p>9 Q But this was not a small project. I mean,</p> <p>10 how much was Tradewind going to make off the sale of</p> <p>11 this project to Enel Kansas?</p> <p>12 A I don't recall exactly, but this was no --</p> <p>13 this project was no bigger than countless other</p> <p>14 projects that we built. I would say it was average</p> <p>15 or --</p> <p>16 Q (Inaudible.)</p> <p>17 A You all tell me, how many megawatts was</p> <p>18 this project?</p> <p>19 Q I'd rather ask you. I mean, do you recall</p> <p>20 how many megawatts this project generated?</p> <p>21 A No, I don't. That's why I asked.</p> <p>22 Q So you would have deferred to someone at</p> <p>23 Tradewind to provide that information to you,</p> <p>24 correct?</p> <p>25 MR. BALL: Objection to form.</p>

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<p>1 A Certainly -- again, eight years ago I no 2 doubt knew the size of the project. I just don't 3 recall the size of the project sitting here right 4 now, but I do know that this project was not an 5 outlier for us. It was -- this project was an 6 average sized project. If -- in fact, if anything, 7 it may have been on the small side. We've built -- 8 Q (By Mr. Fields) I mean -- 9 A We've built 500 megawatt projects before, 10 and my guess is, this was a lot smaller than that. 11 Q So my recollection, I believe it was 150 12 megawatts. 13 A Okay. 14 Q But that being said, while that might not 15 be 500, do you approximately recall the sales price 16 of what profits, I guess, Tradewind made to get this 17 sale completed on or around September 17th, 2014? 18 A I don't recall the specific number. All I 19 can tell you is that there's absolutely no reason 20 that we would have tried to force through a project 21 that would knowingly result in this kind of a 22 problem. 23 Q Because you had an ongoing relationship 24 with Enel Green Power North America, and, clearly, 25 you would have wanted to make sure they were</p>	<p>1 in litigation. So they had concern -- they had 2 concerns over that, and there was a lot of 3 discussion and kind of back and forth, no doubt 4 internally on their side, on our side and between 5 the two companies on what that meant for the 6 project. 7 And we did our homework and in the end we 8 had the Enel guys on their own, they reached their 9 own conclusions. Ultimately, they are the ones that 10 would have to get comfortable, because they were the 11 ones writing the checks. You know, they didn't -- 12 Q (By Mr. Fields) Is it fair to say -- 13 A They didn't just take -- they didn't just 14 take Rob's word for whether a project should go 15 forward. I mean, at 150 megawatts, that's a 3 -- 16 that's a \$300 million project that they are paying 17 for. People don't -- people don't -- no one -- 18 people lose their jobs over writing \$300 million 19 checks and screwing it up. 20 Q So is it fair to say that it would have 21 been your expectation that Enel Green Power North 22 America or its wholly owned subsidiaries would have 23 been doing their own due diligence well before when 24 they purchased the assets from you on 25 September 17th, 2014?</p>
Page 175	Page 177
<p>1 comfortable with whatever assets Enel Green Power 2 North America or one of its wholly owned 3 subsidiaries was buying, correct? 4 A Well, that's your testimony, I guess, not 5 mine. No, that's not -- 6 Q Would you agree with -- that's not right? 7 So it wasn't -- it wouldn't have been -- 8 A Our job. 9 Q Tradewind's -- 10 A Our job -- our job was to sell projects to 11 Enel that all of us, Tradewind and Enel, felt like 12 were good projects that were going to get built and 13 operate and go smoothly. 14 Q You didn't have to -- you didn't have to 15 encourage Enel to get comfortable with this project, 16 because they were kind of in lockstep with Tradewind 17 in the year leading up to the completion of 18 construction? 19 MR. BALL: Objection to form. 20 A Did we have to encourage Enel? Enel 21 had -- Enel had concerns, like we did, the same -- 22 it was all the same. They had concerns over the 23 fact that this project had been in litigation, so 24 that's -- that's a red flag, right, so when you are 25 going to buy a project, it's a red flag if it's been</p>	<p>1 A Yes, they would do due diligence on all 2 projects they would buy from us, yes. 3 Q And I guess you were talking about the 4 size of 150 megawatt project that could be worth 5 around \$300 million, and you were saying that might 6 be on the smaller end maybe of some of the projects 7 that y'all have in your pipeline that you were 8 working on; is that fair to say? 9 A Well, projects got bigger and bigger over 10 the years. We were developing a 500 megawatt 11 project in Kansas at that time, I'm sure of that. 12 So I would call 150 -- at that point in time -- it 13 was -- it was averaged to -- leaning toward the 14 small side. We -- I mean, our first project in 2008 15 that we built was 220 megawatts. 16 Q So if you recall, based on your 17 recollection of the Osage Wind project, what efforts 18 did Tradewind or Enel Green Power North America make 19 towards negotiating some type of settlement to get 20 on the same page as the tribe, since there was other 21 forms of ongoing litigation and there was a dispute 22 around this particular permit? 23 MR. BALL: Objection to form, assumes 24 facts not in evidence. 25 A Well, I've already said, I just -- I'm</p>

<p>Page 178</p> <p>1 just going to repeat myself again. I've already 2 said that I am personally aware that there were 3 discussions between our team and the Tradewind team 4 and the Osage. I cannot tell you whether there was 5 anybody from Enel at the table or what the history 6 was specifically with Wind Capital Group. So I was 7 aware that there were discussions. I can't really 8 quantify it in terms of how many meetings or that 9 kind of thing.</p> <p>10 Q (By Mr. Fields) So because this was a 11 smaller project in the scope of the different 12 portfolio projects that Tradewind was working on, 13 are you aware if there was ever discussions around 14 what the cost benefit analysis would be to just 15 potentially seek the permit and compensate the Osage 16 Minerals Council for the mining they allege was 17 occurring?</p> <p>18 MR. BALL: Objection to form, assumes 19 facts not in evidence.</p> <p>20 A I don't -- I'm not quite sure how to think 21 through that question. When you say mining that 22 they alleged is occurring, are you talking about 23 after they filed -- or at the time they filed the 24 lawsuit, or are you talking about prior in time, 25 and, if so, when?</p> <p>Page 179</p>	<p>Page 180</p> <p>1 MR. BALL: Objection to form, assumes 2 facts not in evidence, vague as to time.</p> <p>3 A Sorry, what -- well, I just don't -- I 4 mean, bottom line is I don't -- I was not involved 5 in those conversations, and I don't -- I don't have 6 anything I can tell you on that.</p> <p>7 Q (By Mr. Fields) So you are not aware of 8 whether or not -- to alleviate any confusion, to use 9 your words, the OMC was directly engaged to request 10 how a permit could be obtained and what the 11 processes or procedures that would involve?</p> <p>12 MR. BALL: Objection to form.</p> <p>13 A Tell me again what OMC stands for.</p> <p>14 Q (By Mr. Fields) Osage Minerals Council.</p> <p>15 A Yeah. All I can tell you all is, again, 16 I'm repeating, but I was aware that the Tradewind 17 team was having discussions with the Osage and 18 trying --</p> <p>19 Q But it was --</p> <p>20 A -- trying to get information from the 21 Osage on -- basically to try and make sure that we 22 didn't need a permit, right, that's kind of what it 23 comes down to, or something -- you know, something 24 with or from the Osage. That's -- that's the extent 25 of my -- my understanding and --</p>
<p>Page 179</p> <p>1 Q (By Mr. Fields) I can break it up in 2 multiple parts. How about in 2013?</p> <p>3 MR. BALL: Objection, form.</p> <p>4 A Yes, well, so as far as -- as far as that 5 goes, I don't -- I think I've already said, I 6 don't -- I didn't recall any formal notices on 7 mining, you know, or what form that took. Certainly 8 there were -- there were conversations, I think, 9 about just trying to understand what is it that the 10 Osage want out of this, because my recollection is 11 that they were being very, sort of 12 non-communicative, not specific at all about their 13 own application of their own permits, the project, 14 how or why they would arise or anything like that. 15 I think -- I think my team, the Tradewind team felt 16 like we were -- we were basically trying to have 17 conversations with a brick wall.</p> <p>18 So there was speculation internally on, 19 like, what is it these guys want, what are they 20 looking for out of this, because they weren't -- 21 they weren't being clear about it.</p> <p>22 Q So what efforts are you aware of that 23 Tradewind made to directly try to figure out what 24 the OMC was raising, in that they believed that 25 federal regulations were requiring a mining permit?</p>	<p>Page 181</p> <p>1 Q But with -- okay.</p> <p>2 A (Inaudible.)</p> <p>3 Q Wouldn't it have been more -- wouldn't it 4 have been more straightforward to just go directly 5 to the source and ask the OMC how to get this permit 6 and what information they had about the permit, 7 instead of speculating as to how it would be 8 applied?</p> <p>9 MR. BALL: Objection to form, assumes 10 facts not in evidence.</p> <p>11 A Well, I don't -- I guess I -- you're 12 suggesting that we never asked the Osage for their 13 view or their input on what was needed. I think 14 your question suggested that that never happened.</p> <p>15 Q (By Mr. Fields) Well, if it was all so 16 vague and you didn't even know what the OMC was 17 asking about in regards to the permit, how did you 18 know what to ask Mr. Slade?</p> <p>19 MR. BALL: Objection to form, assumes 20 facts not in evidence.</p> <p>21 A What I'm telling you is, I don't -- there 22 was a lot -- there was a lot of things going on that 23 I was not involved in. I think we established that. 24 Right? So there were other people that were engaged 25 in conversations with the Osage, et cetera, that I</p>

<p>Page 182</p> <p>1 was not involved with and Wind Capital Group, the</p> <p>2 due diligence team, Matt Gilhousen, et cetera.</p> <p>3 So right now you've just got me. I'm</p> <p>4 telling you what I know or what I recall. The other</p> <p>5 thing is it was a hell of a long time ago, but I sat</p> <p>6 in on some calls, and I was on some email strings</p> <p>7 apparently with Lynn Slade and crew on trying to</p> <p>8 ultimately make sure that the team was comfortable</p> <p>9 that we had -- and our advisers and our lawyers that</p> <p>10 we had what we needed. And that was the conclusion</p> <p>11 that we all came to, both Tradewind and Enel.</p> <p>12 Q (By Mr. Fields) But in your position as</p> <p>13 the CEO, would it have given you pause to understand</p> <p>14 that the tribe, the Osage Minerals Council was never</p> <p>15 directly asked how to get a permit or why they</p> <p>16 believed a permit was needed, and, instead, your</p> <p>17 counsel effectively talked to other contractors in</p> <p>18 the area as a way to seek the same information?</p> <p>19 MR. BALL: Objection to form, assumes</p> <p>20 facts not in evidence.</p> <p>21 A I don't -- I don't know that that -- that</p> <p>22 those conversations never happened. So I'm not -- I</p> <p>23 don't know -- I don't know how to answer your</p> <p>24 question. I think you should ask Matt Gilhousen and</p> <p>25 maybe some of that team as to whether that</p> <p>Page 183</p> <p>1 conversation ever occurred. I'm not going to sit</p> <p>2 here and speculate around the -- that question,</p> <p>3 never having asked, because I don't know that it</p> <p>4 wasn't asked.</p> <p>5 Q (By Mr. Fields) But you at least admit</p> <p>6 that you think it's an important question to ask?</p> <p>7 MR. BALL: Objection to form.</p> <p>8 A I'm struggling, because I know that -- I</p> <p>9 know that we had members of our team speaking</p> <p>10 directly with the Osage, and I --</p> <p>11 Q (By Mr. Fields) At least that's what they</p> <p>12 were telling you?</p> <p>13 A I'm having a hard time with your</p> <p>14 suggesting that that conversation didn't happen,</p> <p>15 never happened.</p> <p>16 Q I guess to be clear, I'm not saying --</p> <p>17 A (Inaudible.)</p> <p>18 Q Go ahead. I apologize.</p> <p>19 A No, after you.</p> <p>20 Q I'm not suggesting that your team never</p> <p>21 had discussions with the Osage Minerals Council.</p> <p>22 I'm specifically asking if you are aware that your</p> <p>23 team did not ask the Osage Minerals Council directly</p> <p>24 for a permit application or for any of the</p> <p>25 procedures to obtain a permit, and instead they went</p>	<p>Page 184</p> <p>1 through outside counsel and looked at other</p> <p>2 contractors in the area who were working within the</p> <p>3 confines of this mining permit?</p> <p>4 A My understanding was that we were not</p> <p>5 getting any clear communication from the Osage at</p> <p>6 that time.</p> <p>7 Q But if you don't ask --</p> <p>8 A (Inaudible.)</p> <p>9 Q If you don't ask the Osage directly --</p> <p>10 A The Osage --</p> <p>11 Q Then you understand --</p> <p>12 A The Osage knew exactly what we were doing.</p> <p>13 They knew exactly what we were doing. They knew the</p> <p>14 project, where it was going, they knew the whole</p> <p>15 thing, and we were not getting any clear</p> <p>16 communications from them on what their expectations</p> <p>17 were. I can't -- I'm not going to speculate on --</p> <p>18 on whether somebody used or didn't use the right</p> <p>19 words to entice something. They were -- hell, they</p> <p>20 had been in litigation on it, so it's not -- I'm not</p> <p>21 going to go there on this some kind of an idea that</p> <p>22 somebody didn't phrase a question or ask exactly a</p> <p>23 right question in order to find out what they</p> <p>24 needed. That's just not how it works in the</p> <p>25 permitting game.</p> <p>Page 185</p> <p>1 And by the way, there's very much a legal</p> <p>2 analysis involved in permits by definition. There</p> <p>3 are legal things. They are either required. Or</p> <p>4 they aren't. And that's -- it's very appropriate,</p> <p>5 obviously, for us to have an attorney looking at a</p> <p>6 legal analysis of whether a permit is required or</p> <p>7 not.</p> <p>8 Q But were you aware what Tradewind was</p> <p>9 missing from the OMC --</p> <p>10 MR. BALL: Objection to form.</p> <p>11 Q (By Mr. Fields) -- that was requiring you</p> <p>12 to hire Mr. Slade?</p> <p>13 MR. BALL: Objection to form.</p> <p>14 A I don't know what else to say to you.</p> <p>15 I've told you all I know. I mean, we -- my team,</p> <p>16 Tradewind team, we felt like we did everything we</p> <p>17 could do to find out what it was that the Osage felt</p> <p>18 like was required in connection with our wind</p> <p>19 project, and we did the legal analysis, both.</p> <p>20 Q (By Mr. Fields) So are you saying -- or</p> <p>21 is it fair to say that at the time, in 2013 and '14,</p> <p>22 did you perceive the OMC to be a brick wall of sorts</p> <p>23 regarding this project?</p> <p>24 A Well, I'm not the best person to probably</p> <p>25 answer that, but sitting in my seat, having</p>
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1 conversations around Tradewind with the team, I
2 would say, yes, that was my -- that was my
3 impression, that they were not -- they were not --
4 they were not being helpful.

5 They were not communicating, very
6 different -- I can say very different experience
7 than -- we get permits all the time. We get them at
8 the county level, we deal with planning and zoning,
9 we deal with counties, we deal with states all the
10 time. We deal with environmental agencies, and the
11 Osage stood out as being unhelpful, no question
12 about it.

13 **Q When you are dealing --**

14 **A** No question about that.

15 **Q Okay. When you are dealing with those**
16 **other governmental authorities that you've listed,**
17 **like the county or the state, don't you typically**
18 **engage with them directly to find out how you can**
19 **obtain the permit, what the permit looks like, what**
20 **is required of the permit? Wouldn't you do that --**

21 **A** We do.

22 **Q -- as basic due diligence?**

23 **A** We do. And I think that there were
24 probably conversations between Tradewind and the
25 Osage, but I will also point out that this was a

1 different -- this was also a different situation,
2 right, where we bought the project from Wind Capital
3 Group, and Wind Capital Group and the Osage had it
4 litigated, to a final conclusion in litigation, and
5 there was nothing happening in that regard.

6 So you are asking me a lot of questions
7 about what I think is reasonable. I think it was
8 very reasonable for us and Enel to conclude that the
9 dispute, whatever it was, the dispute between the
10 Osage and this project had been litigated and
11 concluded. No one was sitting around thinking about
12 or talking about serial, multiple lawsuits that --
13 that was not -- that was not expected at all.

14 **Q Well, earlier in the very beginning of**
15 **your deposition Ms. Baker went into the specific**
16 **agreements that controlled the MIPA from Wind**
17 **Capital Group selling its assets to Tradewind Energy**
18 **on the Osage Wind project in August of 2013, and**
19 **then the MIPA in September of 2014 with Tradewind**
20 **selling its assets in the Osage Wind project to the**
21 **Enel Kansas.**

22 **In the context of each of those MIPAs,**
23 **governmental authority was specifically excluded as**
24 **to the Osage Minerals Council or the Osage Nation.**
25 **So isn't it fair to say that, unlike counties or**

1 **states where you may have directly engaged with them**
2 **as to what a permanent would be required --**

3 **MR. BALL:** Object --

4 **Q (By Mr. Fields) -- did that have some**
5 **bearing on why Tradewind didn't engage directly with**
6 **the government -- government authority that had no**
7 **authority under your own agreements?**

8 **MR. BALL:** Objection to form, misstates
9 the evidence. It's incorrect what you've stated
10 about the agreements that you mentioned earlier. So
11 objection, it misstates the evidence, misrepresents
12 it.

13 **Q (By Mr. Fields) You can answer.**

14 **A** Well, you are asking the wrong person. I
15 don't -- you keep asking me about conversations with
16 other -- with the Osage or U.S. agencies or
17 whatever, and I just wasn't involved. I wasn't
18 involved in that.

19 **Q But I'd like an answer to my question. If**
20 **you expected the Osage Minerals Council to deal with**
21 **you directly, but you specifically in agreements**
22 **excluded that entity as a government authority that**
23 **had the ability to have binding permits on your**
24 **project, how are they supposed to inform you of**
25 **their permit that you are specifically saying they**

1 **don't have the authority to levy on your project?**

2 **MR. BALL:** Objection to form,
3 misrepresents the --

4 (Reporter clarification.)

5 **MR. BALL:** -- provisions in the agreement
6 you are referencing. That's not at all what it
7 says.

8 **A** I feel like you're conflating a couple of
9 points here. So the fact that -- I guess what you
10 are looking back at is that the permit from the
11 Osage was excluded from the definition of
12 governmental authority. That was in the reps,
13 right?

14 **Q (By Mr. Fields) I believe so.**

15 **A** So the representations between buyer and
16 seller are -- well, first of all, I've already said
17 this, I don't recall -- I don't recall any specifics
18 around the drafting of the language in that
19 document, but the reps -- the form of the reps is a
20 risk allocation issue, among other things. In any
21 event, that -- I don't see that that is dispositive
22 of conversations with -- of conversations with the
23 Osage and the determination that we -- there's not a
24 permit that we were listing there that was needed.

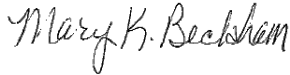
25 I feel like you are kind of conflating

<p>Page 190</p> <p>1 those things. I don't see -- the terms used in the</p> <p>2 legal agreement are not -- in the reps and</p> <p>3 warranties are not dispositive of whatever was going</p> <p>4 on with discussions with the Osage or the</p> <p>5 government.</p> <p>6 Q And I appreciate that perspective, but I</p> <p>7 guess you compared the Osage Minerals Council to a</p> <p>8 state or local permitting authority that you would</p> <p>9 deal with directly. So what I'm trying to</p> <p>10 understand is, is it your understanding that y'all</p> <p>11 dealt with the OMC in the same way and literally</p> <p>12 asked for the permit that they were telling you was</p> <p>13 required?</p> <p>14 MR. BALL: Objection, misstates the</p> <p>15 record, assumes facts not in evidence.</p> <p>16 A I don't -- you need to ask -- you need to</p> <p>17 ask somebody else that question. I wasn't</p> <p>18 responsible for getting permits.</p> <p>19 Q (By Mr. Fields) Okay. So are you aware</p> <p>20 of any financial valuation or quantification of what</p> <p>21 compliance with the suggested mining permit would</p> <p>22 have resulted in an impact to the project?</p> <p>23 MR. BALL: Objection to form.</p> <p>24 A We didn't identify it as a needed permit,</p> <p>25 but, no, I'm not aware of a financial analysis.</p>	<p>Page 192</p> <p>1 reimbursement investigation was made?</p> <p>2 A Yeah, I don't know what to tell you. I</p> <p>3 don't know -- I don't even know if that would have</p> <p>4 been done inside Tradewind or if that would have</p> <p>5 been something that Enel did, if there is such a</p> <p>6 thing.</p> <p>7 Q All right.</p> <p>8 MR. FIELDS: I'd like to take a couple of</p> <p>9 minutes to just review my notes, but I definitely</p> <p>10 don't expect many more questions whatsoever, but I'd</p> <p>11 just like to confer here for about two minutes.</p> <p>12 THE VIDEOGRAPHER: We're off the record at</p> <p>13 3:06 p.m.</p> <p>14 (A recess was taken.)</p> <p>15 THE VIDEOGRAPHER: We're back on the</p> <p>16 record at 3:14 p.m.</p> <p>17 Q (By Mr. Fields) Thank you, Mr. Freeman,</p> <p>18 for your patience. I just have three discrete areas</p> <p>19 to get into, and I think we'll be out of here in a</p> <p>20 couple of minutes.</p> <p>21 So to give you the context of maybe the</p> <p>22 months leading up to the MIPA where Tradewind sold</p> <p>23 its interest in Osage Wind to Enel Kansas, August</p> <p>24 and September of 2014, are you aware that there was</p> <p>25 potential pressure to get the tax credits for the</p>
<p>Page 191</p> <p>1 Q (By Mr. Fields) Okay. But you also were</p> <p>2 not aware that Mr. Slade and Modrall Sperling had</p> <p>3 made anecdotes that it was possible that some of the</p> <p>4 minerals rendered inaccessible by the turbines and</p> <p>5 their related infrastructure could require</p> <p>6 reimbursement to the mineral estate owner, correct?</p> <p>7 MR. BALL: Objection to form.</p> <p>8 A Ask the question again.</p> <p>9 Q (By Mr. Fields) Were you aware that</p> <p>10 Modrall Sperling noted that it's detailed legal</p> <p>11 analysis included the potential that minerals</p> <p>12 rendered inaccessible by the placement of the</p> <p>13 turbines and the other infrastructure by the project</p> <p>14 could require reimbursement to the mineral estate</p> <p>15 owner?</p> <p>16 A Yeah, I don't remember that, no.</p> <p>17 Q So you took no efforts to investigate that</p> <p>18 potential reimbursement requirement after it was</p> <p>19 provided by Mr. Slade?</p> <p>20 MR. BALL: Objection to form.</p> <p>21 A I don't recall that. I don't recall doing</p> <p>22 that, no.</p> <p>23 Q (By Mr. Fields) And, potentially, who</p> <p>24 would be the best person or entity to follow up with</p> <p>25 to find out if that type of valuation or</p>	<p>Page 193</p> <p>1 project realized so that the construction timeline</p> <p>2 needed to move forward quickly?</p> <p>3 A No.</p> <p>4 Q Were you aware that there was a timetable</p> <p>5 with GE in which the turbines were going to be</p> <p>6 delivered, that pressure was on that timeline as</p> <p>7 well in September of 2014 and that construction</p> <p>8 needed to kind of move quickly?</p> <p>9 MR. BALL: Objection.</p> <p>10 A No.</p> <p>11 Q (By Mr. Fields) Were you aware that out</p> <p>12 of the 84 turbines that there was additional</p> <p>13 blasting requirements by the subcontractors that the</p> <p>14 general contractor was requiring to more quickly be</p> <p>15 able to process the turbine foundations in light of</p> <p>16 staying in line with the timelines that the project</p> <p>17 was on?</p> <p>18 MR. BALL: Objection, form.</p> <p>19 A No.</p> <p>20 Q (By Mr. Fields) Are you aware of the</p> <p>21 subject matter involving the 2011 litigation in</p> <p>22 federal court regarding, I believe, Wind Capital</p> <p>23 Group and the Osage Minerals Council regarding this</p> <p>24 project?</p> <p>25 A I don't really have any current memory of</p>

<p>1 what that was about, no.</p> <p>2 Q The time in 2013 October to 2014 October,</p> <p>3 were you aware then what the subject matter of that</p> <p>4 litigation was?</p> <p>5 A I never read any of the -- any of the</p> <p>6 documents related to the -- related to that</p> <p>7 litigation, so what I would have known would have</p> <p>8 just been -- well, I guess, yes, I probably -- I</p> <p>9 probably was told somewhere along the way in the</p> <p>10 form of a memo or discussions with David Boyce or</p> <p>11 whoever what that was around, but I personally -- I</p> <p>12 personally didn't go review the pleadings kind of</p> <p>13 thing. I guess it's possible that as part of our</p> <p>14 due diligence on the project Steve Willman and/or</p> <p>15 Lynn Slade may have reviewed the pleadings, but I</p> <p>16 didn't.</p> <p>17 Q So you were not aware that that 2011</p> <p>18 federal litigation was specific regarding potential</p> <p>19 impairment of oil and gas development regarding the</p> <p>20 area in which the Osage Wind project was going in?</p> <p>21 MR. BALL: Objection to form.</p> <p>22 A Rings a bell when you say that, but I</p> <p>23 wouldn't be able to sit and explain today what that</p> <p>24 suit entailed or involved.</p> <p>25 Q (By Mr. Fields) But would it be fair to</p>	<p>1 identified as an issue is different than the prior</p> <p>2 litigation.</p> <p>3 Q (By Mr. Fields) But you are aware that</p> <p>4 the entire purpose behind the request for outside</p> <p>5 legal analysis from Modrall Sperling was</p> <p>6 specifically regarding whether or not the activities</p> <p>7 constituted mining?</p> <p>8 MR. BALL: Objection to the form, assumes</p> <p>9 facts not in evidence.</p> <p>10 A Well, my recollection of our engagement of</p> <p>11 Lynn Slade was to basically oil the ocean and tell</p> <p>12 us what it was we needed or didn't need or anything</p> <p>13 we're missing.</p> <p>14 Q (By Mr. Fields) So you don't --</p> <p>15 A I can't -- I wouldn't even say that that</p> <p>16 was wholly refined to a mining question per se.</p> <p>17 Obviously, that came up in that form at some point.</p> <p>18 Yeah, I mean, I guess the long and short of it is</p> <p>19 the ultimate -- the ultimate theory that the Osage</p> <p>20 land is on seems distinct from not interfering with</p> <p>21 oil and gas in the way that we would typically</p> <p>22 manage to.</p> <p>23 Q And you are aware of the distinction</p> <p>24 between the Osage Minerals Council and the Bureau of</p> <p>25 Indian Affairs, correct?</p>
<p>1 say that a lawsuit regarding oil and gas impairment</p> <p>2 being one specific type of minerals is separate and</p> <p>3 apart from illegally mining hard rock minerals on</p> <p>4 the same location?</p> <p>5 MR. BALL: Objection to form.</p> <p>6 A Yeah, I don't -- I mean, I don't have</p> <p>7 any -- I don't have any -- that sounds like you are</p> <p>8 asking me almost for a legal analysis, and I don't</p> <p>9 have an opinion on that.</p> <p>10 Q (By Mr. Fields) I'm just asking you about</p> <p>11 your personal opinion. Were you aware that the 2011</p> <p>12 litigation concerned impairment of oil and gas and</p> <p>13 that the current litigation that we're here for now</p> <p>14 involves hard rock mining?</p> <p>15 A Your question is, are those two different</p> <p>16 things?</p> <p>17 Q I'm asking you if you were aware that they</p> <p>18 were two different subject matters involving at</p> <p>19 least the same general area?</p> <p>20 MR. BALL: Objection to form.</p> <p>21 A Yeah, I mean, I guess. I don't -- I mean,</p> <p>22 it's -- you're -- I'm not sure how to answer the</p> <p>23 question, because you are asking me about mining.</p> <p>24 Again, we didn't identify mining as an issue, so I'm</p> <p>25 struggling here with whether something that wasn't</p>	<p>1 A Very, very loosely, very high level.</p> <p>2 Q Were you --</p> <p>3 A I think the BIA is a -- is -- here would</p> <p>4 be what I think the answer to that is. The BIA is a</p> <p>5 federal government agency and that the Osage</p> <p>6 Minerals Council is a local level Osage County</p> <p>7 group, and that may not even be right, but that's</p> <p>8 my -- that's my guess or my understanding or</p> <p>9 whatever.</p> <p>10 Q So if you didn't think that you were</p> <p>11 asking Modrall Sperling and Lynn Slade for legal</p> <p>12 advice on whether or not a mining permit was</p> <p>13 required, or that mining regulations were required</p> <p>14 of the Osage Wind project, what was your</p> <p>15 understanding of what analysis you were requesting</p> <p>16 from Modrall Sperling --</p> <p>17 MR. BALL: Objection to form.</p> <p>18 Q (By Mr. Fields) -- beginning in October</p> <p>19 of 2013?</p> <p>20 A Well, I didn't -- I did not say, I don't</p> <p>21 think -- the record should reflect this, I did not</p> <p>22 say that we weren't getting advice on mining. I</p> <p>23 said -- I think what I said was -- is that was --</p> <p>24 that was -- I don't believe that we went to Lynn</p> <p>25 Slade and said, we have a mining -- we have a mining</p>

<p>Page 198</p> <p>1 question or a mining issue, research that for us. I</p> <p>2 don't remember it being, you know, quite that</p> <p>3 pointed early on. My recollection -- all I can</p> <p>4 recall the engagement is, is that we hired Lynn</p> <p>5 Slade to review what we were doing with the wind</p> <p>6 project relative to the Osage interests in the</p> <p>7 county and to identify anything that we needed to</p> <p>8 know about and that certainly mining became part of</p> <p>9 that.</p> <p>10 Q Were you aware that the Osage mineral</p> <p>11 interests effectively are subsurface throughout the</p> <p>12 entirety of Osage County, Oklahoma?</p> <p>13 A No, I don't recall the scope of their</p> <p>14 mineral interests.</p> <p>15 Q When you described your personal view that</p> <p>16 the Osage Minerals Council acted like a brick wall,</p> <p>17 was that because they were simply opposing the</p> <p>18 project, the Osage Wind project in multiple forms,</p> <p>19 or was it based on something more specific?</p> <p>20 MR. BALL: Objection to form.</p> <p>21 A My -- my recollection was just simply that</p> <p>22 the feedback from the team was that they were just</p> <p>23 not helpful. They were -- that we were not getting</p> <p>24 feedback, we were -- they were just not helpful. It</p> <p>25 was not -- it was not "They are opposing the</p>	<p>Page 200</p> <p>1 your patience and for powering through a lot of this</p> <p>2 day with very few breaks. So thank you to your</p> <p>3 determination to get through it.</p> <p>4 THE WITNESS: Okay. Yeah. No problem.</p> <p>5 MR. BALL: Give us a few minutes to</p> <p>6 consider whether we have any questions, and we'll be</p> <p>7 back.</p> <p>8 THE VIDEOGRAPHER: We're off the record at</p> <p>9 3:25 p.m.</p> <p>10 (A recess was had.)</p> <p>11 THE VIDEOGRAPHER: We are back on the</p> <p>12 record at 3:34 p.m.</p> <p>13 MR. BALL: We reserve our questions for</p> <p>14 trial. Is there anything further?</p> <p>15 MS. BAKER: Nothing further from us.</p> <p>16 MR. MAY: This is Kirk May. Would you</p> <p>17 please be sure and send me the transcript? The</p> <p>18 witness wants to review it and sign it, please.</p> <p>19 THE VIDEOGRAPHER: This concludes the</p> <p>20 videotaped deposition of Robert Freeman. We're off</p> <p>21 the record at 3:35 p.m.</p> <p>22 (DEPOSITION CONCLUDED AT 3:35 P.M.)</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 199</p> <p>1 project" --</p> <p>2 Q (By Mr. Fields) So --</p> <p>3 A -- because that implies -- that implies --</p> <p>4 if someone is opposing a project, that sort of</p> <p>5 implies that they have taken a position, and that's</p> <p>6 not the way I remember it.</p> <p>7 Q So you -- how would you have wanted the</p> <p>8 Osage Minerals Council to be more helpful at the</p> <p>9 time in October 2013 to October 2014?</p> <p>10 A Well, I suppose it would have been very</p> <p>11 specific direction or guidance on, here's what you</p> <p>12 need, here's why, and here's the circumstances in</p> <p>13 which you need it and when you need it. I mean,</p> <p>14 that would just be -- that would be a normal</p> <p>15 permitting conversation. And --</p> <p>16 Q But you don't --</p> <p>17 A Yeah, I don't -- personally, yeah, I guess</p> <p>18 I don't -- I don't -- I don't -- I don't recall that</p> <p>19 kind of specificity, and I just remember the team --</p> <p>20 the team sort of complaining that they were not</p> <p>21 being specific and not being helpful. So if you</p> <p>22 want more detail on that, you need to ask other</p> <p>23 people.</p> <p>24 Q Okay. Thank you for your time. I don't</p> <p>25 have any more questions at this point. I appreciate</p>	<p>Page 201</p> <p>1 JURAT</p> <p>2 UNITED STATES/OSAGE WIND MINERALS COUNCIL VS OSAGE</p> <p>3 WIND</p> <p>4 JOB FILE NO. 152612</p> <p>5 STATE OF OKLAHOMA</p> <p>6 SS</p> <p>7 COUNTY OF TULSA</p> <p>8 I, ROBERT FREEMAN, do hereby state under</p> <p>9 oath that I have read the above and foregoing</p> <p>10 deposition in its entirety and that the same is a</p> <p>11 full, true and correct transcription of my testimony</p> <p>12 so given at said time and place, except for the</p> <p>13 corrections noted.</p> <p>14</p> <p>15 _____</p> <p>16 Signature of Witness</p> <p>17 Subscribed and sworn to before me, the</p> <p>18 undersigned Notary Public in and for the State of</p> <p>19 Oklahoma by said witness, ROBERT FREEMAN, on this</p> <p>20 _____ day of _____, 2021.</p> <p>21</p> <p>22</p> <p>23 _____</p> <p>24 NOTARY PUBLIC</p> <p>25 MY COMMISSION EXPIRES: _____</p>

1	ERRATA SHEET	Page 202
2	UNITED STATES/OSAGE WIND MINERALS COUNCIL VS OSAGE	
3	WIND	
4	DEPOSITION OF ROBERT FREEMAN	
5	REPORTED BY: MARY K. BECKHAM, CSR RPR	
6	DATE DEPOSITION TAKEN: SEPTEMBER 7, 2021	
7	JOB FILE NO. 152612	
8	PAGE LINE IS SHOULD BE	
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1	CERTIFICATE	Page 203
2	STATE OF OKLAHOMA	
3	SS	
4	COUNTY OF TULSA	
5	I, Mary K. Beckham, Certified Shorthand	
6	Reporter within and for the State of Oklahoma, do	
7	hereby certify that the above-named ROBERT FREEMAN	
8	was by me first duly sworn to testify the truth, the	
9	whole truth, and nothing but the truth, in the case	
10	aforesaid; that the above and foregoing videotaped	
11	deposition was by me taken in shorthand and	
12	thereafter transcribed; that the same was taken,	
13	pursuant to stipulations hereinbefore set out; and	
14	that I am not an attorney for nor relative of any of	
15	said parties or otherwise interested in the event of	
16	said action.	
17		
18	IN WITNESS WHEREOF, I have hereunto set my	
19	hand and official seal this 13th day of September,	
20	2021.	
21		
22	_____	
23	Mary K. Beckham, CSR, RPR	
24	CSR No. 01053	
25		